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STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

1989 GENERAL ASSEMBLY

AT ITS

FIRST SESSION 1989

BEGINNING ON

WEDNESDAY, THE ELEVENTH DAY OF JANUARY, A.D. 1989

HELD IN THE CITY OF RALEIGH

ISSUED BY
SECRETARY OF STATE RUFUS L. EDMISTEN

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SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

FIRST SESSION 1989

H.B. 1150 **CHAPTER 623**

AN ACT TO AMEND THE REQUIREMENTS FOR LICENSURE OF PLUMBING AND HEATING CONTRACTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-21 reads as rewritten:

"*§ 87-21. Definitions; contractors licensed by Board; examination; posting license, etc.*

(a) Definitions. -- For the purpose of this Article:

(1) The word 'plumbing' is hereby defined to be the system of pipes, fixtures, apparatus and appurtenances, installed upon the premises, or in a building, to supply water thereto and to convey sewage or other waste therefrom.

(2) The phrase 'heating, group number one' shall be deemed and held to be the heating system of a building, which requires the use of high or low pressure steam, vapor or hot water, including all piping, ducts, and mechanical equipment appurtenant thereto, within, adjacent to or connected with a building, for comfort heating.

(3) The phrase 'heating, group number two' means an air conditioning system which consists of an assemblage of interacting components producing conditioned air for comfort cooling by the lowering of temperature, and having a mechanical refrigeration capacity in excess of fifteen tons, and which circulates air.

(4) The phrase 'heating, group number three' shall be deemed and held to be a direct heating system of a building which produces heat to raise the temperature of the space within the building for the purpose of comfort in which electric heating elements or products of combustion exchange heat either directly with the building supply air or indirectly through a heat exchanger and using an air distribution system of ducts. A heating system requiring air distribution ducts and supplied by ground water or utilizing a coil supplied by water from a domestic hot water heater not exceeding 150° Fahrenheit requires either plumbing or heating group number one license to extend piping from valved connections in the domestic hot water system to the heating coil and requires either heating group number one or heating group number three license for installation of coil, duct work, controls, drains and related appurtenances.

(5) Any person, firm or corporation, who for a valuable consideration, installs, alters or restores, or offers to

install, alter or restore, either plumbing, heating group number one, or heating group number two, or heating group number three, or any combination thereof, as defined in this Article, shall be deemed and held to be engaged in the business of plumbing or heating contracting. Any person who installs a plumbing or heating system on property which at the time of installation was intended for sale or to be used primarily for rental is deemed to be engaged in the business of plumbing or heating contracting without regard to receipt of consideration, unless exempted elsewhere in this Article.

(6) The word 'contractor' is hereby defined to be a person, firm or corporation engaged in the business of plumbing or heating contracting.

(7) The word 'heating' shall be deemed and held to mean heating group number one, heating group number two, heating group number three, or any combination thereof.

(8) The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required.

(9) The word 'Board' means the State Board of Examiners of Plumbing and Heating Contractors.

(10) The word 'experience' means actual and practical work directly related to the category of plumbing, heating group number one, heating group number two, or heating group number three, and includes related work for which a license is not required.

(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. -- In order to protect the public health, comfort and safety, the Board shall establish two classes of licenses: Class I covering all structures and systems to which this Article applies, and Class II covering plumbing and heating systems in single-family detached residential dwellings. The Board shall prescribe the standard of ~~competence~~ competence, experience and efficiency to be required of an applicant for license of each class, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, fire hazards and related subjects as these subjects pertain to either plumbing or heating; and as a result of the examination, the Board shall issue a certificate of license of the appropriate class in plumbing or heating, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in,

or offer to engage in, the business of either plumbing or heating contracting, or any combination thereof. The Board may require experience as a condition of examination, provided that (i) the experience required may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience. Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, and it is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or heating group number three, or any combination thereof. Each application for examination shall be accompanied by a check, post-office money order, or cash, in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year, and additional examinations may be given at such other times as the Board may deem wise and necessary. Any person may demand in writing a special examination, and upon payment by the applicant of the cost of holding such examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for such examination. Upon satisfactory proof of the applicant's inability to write and upon demand of an applicant for a Class II plumbing or heating license six weeks prior to an examination, the Board shall conduct the examination of that applicant orally, and shall not require that applicant to take a written examination as to examination inquiries answered other than by preparation of diagrams. Signed statements from two reliable citizens resident in the home county of the applicant shall constitute satisfactory proof of an applicant's inability to write. A person who fails to pass any examination shall not be reexamined until the next regular examination.

(c) To Whom Article Applies. -- The provisions of this Article shall apply to all persons, firms, or corporations who engage in, or attempt to engage in, the business of plumbing or heating contracting, or any combination thereof as defined in this Article. The provisions of this Article shall not apply to those who make minor repairs or minor replacements to an already installed system of plumbing or heating.

(d) Repealed by Session Laws 1979, c. 834, s. 7.

(e) Posting License; License Number on Contracts, etc. -- The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its

number shall appear on all proposals or contracts and requests for permits issued by municipalities.

(f) Repealed by Session Laws 1971, c. 768, s. 4.

(g) The Board may, in its discretion, grant to plumbing or heating contractors licensed by other states license of the same or equivalent classification without written examination upon receipt of satisfactory proof that the qualifications of such applicants are substantially equivalent to the qualifications of holders of similar licenses in North Carolina and upon payment of the usual license fee."

Sec. 2. G.S. 87-22 reads as rewritten:

"*§ 87-22. License fee based on population; expiration and renewal; penalty.*

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, in cities or towns of 10,000 inhabitants or more shall pay an annual license fee not exceeding ~~fifty dollars ($50.00),~~ seventy-five dollars ($75.00), and in cities or towns of less than 10,000 inhabitants an annual license fee not exceeding ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. It shall be the duty of the secretary and treasurer to cause to be mailed to every licensee registered hereunder notice to his last known address of the amount of fee required for renewal of license, such notice to be mailed at least one month in advance of the expiration of said license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the fee therefor during the month of January in each year, the Board shall increase said license fee ten per centum (10%) for each month or fraction of a month that payment is delayed; provided that the penalty for nonpayment shall not exceed the amount of the annual fee, and provided further that the Board requires reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of license renewal. A licensee employed full time as a local government plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualification Board may renew his license at a fee not to exceed twenty-five dollars ($25.00)."

Sec. 3. G.S. 87-22.1 reads as rewritten:

"*§ 87-22.1. Examination fees; funds disbursed upon warrant of chairman and secretary-treasurer.*

The Board shall charge an examination fee ~~of ten dollars ($10.00)~~ not exceeding fifty dollars ($50.00) for each regular examination

provided, and such funds collected shall be disbursed upon warrant of the chairman and secretary-treasurer, to partially defray general expenses of the Board. Such examination fee shall be retained by the Board irrespective of whether or not the applicant is granted a license."

Sec. 4. G.S. 87-25 reads as rewritten:

"*§ 87-25. Violations made misdemeanor; employees of licensees excepted.*

Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of either plumbing or heating contracting, or both, as defined in G.S. 87-21, without first having been licensed to engage in such business, or businesses, as required by the provisions of this Article; or any person, firm or corporation holding a limited plumbing or heating license under the provisions of this Article who shall practice or offer to practice or carry on any type of plumbing or heating contracting not authorized by said limited license; or any person, firm or corporation who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this Article, shall be guilty of a misdemeanor and upon conviction fined not less than one hundred dollars ($100.00) or imprisoned for not more than three months, or both, in the discretion of the court. ~~Employees, while working under the supervision and jurisdiction of a person, firm or corporation licensed in accordance with the provisions of the Article.~~ An employee in the course of his work as a bona fide employee of a licensee of the Board shall not be construed to have engaged in the business of either plumbing or heating contracting, or both."

Sec. 5. This act is effective upon ratification and applies to applications submitted, fees due, and violations committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1989.

S.B. 440 **CHAPTER 624**

AN ACT TO PROVIDE FOR ACCOUNTING PRACTICE REVIEW OF CERTIFIED PUBLIC ACCOUNTANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93-12 reads as rewritten:

"*§ 93-12. Board of Certified Public Accountant Examiners.*

The name of the State Board of Accountancy is hereby changed to State Board of Certified Public Accountant Examiners and said name State Board of Certified Public Accountant Examiners is hereby substituted for the name State Board of Accountancy wherever the latter name appears or is used in Chapter 93 of the General Statutes. Said Board is created as an agency of the State of North Carolina and shall consist of seven members to be appointed by the Governor, five persons to be holders of valid and unrevoked certificates as certified public accountants issued under the provisions of this Chapter and two persons who are not certified public accountants who shall represent the interest of the public at large. Members of the Board shall hold office for the term of three years and until their successors are appointed. Appointments to the Board shall be made under the provisions of this Chapter as and when the terms of the members of the present State Board of Accountancy expire; provided, that all future appointments to said Board shall be made for a term of three years expiring on the thirtieth day of June. All Board members serving on June 30, 1980, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1980, shall serve more than two complete consecutive terms. The powers and duties of the Board shall be as follows:

(1) To elect from its members a president, vice-president and secretary-treasurer. The members of the Board shall be paid, for the time actually expended in pursuance of the duties imposed upon them by this Chapter, an amount not exceeding ten dollars ($10.00) per day, and they shall be entitled to necessary traveling expenses.

(2) To employ legal counsel, clerical and technical assistance and to fix the compensation therefor, and to incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this Chapter. Upon request the Attorney General of North Carolina will advise the Board with respect to the performance of its duties and will assign a member of his staff, or approve the employment of counsel, to represent the Board in any hearing or litigation arising under this Chapter. The Board may, in the exercise of its discretion, cooperate with similar boards of other states, territories and the District of Columbia in activities designed to bring about uniformity in standards of admission to the public practice of accountancy by certified public accountants, and may employ a uniform system of preparation of examinations to be given to candidates for certificates as certified public accountants, including the

services and facilities of the American Institute of Certified Public Accountants, or of any other persons or organizations of recognized skill in the field of accountancy, in the preparation of examinations and assistance in establishing and maintaining a uniform system of grading of examination papers, provided however, that all examinations given by said Board shall be adopted and approved by the Board and that the grade or grades given to all persons taking said examinations shall be determined and approved by the Board.

(3) To formulate rules for the government of the Board and for the examination of applicants for certificates of qualification admitting such applicants to practice as certified public accountants.

(4) To hold written or oral examinations of applicants for certificates of qualification at least once a year, or oftener, as may be deemed necessary by the Board.

(5) To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, shall have passed an examination to the satisfaction of the Board, in 'accounting theory,' 'accounting practice,' 'auditing,' 'business law,' and other related subjects.

From and after July 1, 1961, any person shall be eligible to take the examination given by the Board, or to receive a certificate of qualification to practice as a certified public accountant, who is a citizen of the United States or has declared his intention of becoming a citizen or is a resident alien, and has been domiciled in or resided for at least four months within the State of North Carolina immediately prior to the filing of an application to take the examination or to receive a certificate of qualification, is 18 years of age or over, and is of good moral character, and submits evidence satisfactory to the Board that:

a. He holds a bachelor's degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, and

b. His degree studies included a concentration in accounting as defined by the Board or that he supplemented his degree studies with courses that the Board determines to be substantially equivalent to a concentration in accounting, and

c. Satisfactory evidence of the completion of two years in an accredited college or university or its equivalent with a concentration in accounting as defined by the Board and two years experience in the practice of public accountancy under the direct supervision of a certified public accountant, in addition to other experience requirements in this section, may be substituted for a bachelor's degree.

Provided, however, the Board may, in its discretion, waive the education requirement of any candidate if the Board is satisfied from the result of a special written examination given the candidate by the Board to test his educational qualifications that he is as well equipped, educationally, as if he met the education requirements specified above. The Board may provide by regulation for the general scope of such examinations and may obtain such advice and assistance as it deems appropriate to assist it in preparing, administering and grading such special examinations.

Such applicant, in addition to passing the examination given by the Board, shall have the endorsement as to his eligibility of three certified public accountants who currently hold licenses in any state or territory of the United States or the District of Columbia and shall have had either:

a. Two years experience in the field of accounting under the direct supervision of a certified public accountant who currently holds a valid license in any state or territory of the United States or the District of Columbia, or
b. Five years experience teaching accounting in a four-year college or university accredited by one of the regional accrediting associations or in a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, or
c. Five years experience in the field of accounting; or five years experience teaching college transfer accounting courses at a community college or technical institute accredited by one of the regional accrediting associations, or
d. Any combination of such experience determined by the Board to be substantially equivalent to the foregoing.

A Master's or more advanced degree in accounting, tax law, economics, business administration, or the equivalent thereof, or a law degree with emphasis in taxation or accounting from an accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take its examinations and withhold certificates until such person shall have had the required experience.

(6) In its discretion to grant certificates of qualification admitting to practice as certified public accountants such applicants who shall be the holders of valid and unrevoked certificates as certified public accountants, or the equivalent, issued by or under the authority of any state, or territory of the United States or the District of Columbia, when in the judgment of the Board the requirements for the issuing or granting of such certificates or degrees are substantially equivalent to the requirements established by this Chapter: Provided, however, that such applicant has been a bona fide resident of this State for not less than four months or, if a nonresident, he has maintained or has been a member of a firm that has maintained for not less than four months a bona fide office within this State for the public practice of accounting and, provided further, that the state or political subdivision of the United States upon whose certificate the reciprocal action is based grants the same privileges to holders of certificates as certified public accountants issued pursuant to the provisions of this Chapter. The Board, by general rule, may grant temporary permits to applicants under this subsection pending their qualification for reciprocal certificates.

(7) To charge for each examination provided for in this Chapter a fee not exceeding two hundred dollars ($200.00). This fee shall be payable to the secretary-treasurer of the Board by the applicant at the time of filing application. In no case shall the examination fee be refunded, unless in the discretion of the Board the applicant shall be deemed ineligible for examination.

(7a) To charge for each initial certificate of qualification provided for in this Chapter a fee not exceeding seventy-five dollars ($75.00).

(7b) To require an annual registration of each firm and to charge an annual registration fee not to exceed two hundred dollars ($200.00) for each firm with one office, and a fee not to exceed twenty-five dollars ($25.00) for each

additional North Carolina office of the firm, to defray the administrative costs of accounting practice review programs. The Board may charge an annual fee not to exceed twenty-five dollars ($25.00) for each firm application for exemption from the accounting practice review program.

(8) To require the renewal of all certificates of qualification annually on the first day of July, and to charge an annual renewal fee not to exceed fifty dollars ($50.00).

(8a) To require the registration of certified public accountant firms which have offices both within and outside of North Carolina, and the payment by such firms of an annual registration fee based on the total number of partners in each such firm, but not to exceed two thousand five hundred dollars ($2,500) per firm per year.

(8b) To formulate rules and regulations for the continuing professional education of all persons holding the certificate of certified public accountant, subject to the following provisions:

a. After January 1, 1983, any person desiring to obtain or renew a certificate as a certified public accountant must offer evidence satisfactory to the Board that such person has complied with the continuing professional education requirement approved by the Board. The Board may grant a conditional license for not more than 12 months for persons who are being licensed for the first time, or moving into North Carolina, or for other good cause, in order that such person may comply with the continuing professional education requirement.

b. The Board shall promulgate rules and regulations for the administration of the continuing professional education requirement with a minimum number of hours of 20 and a maximum number of hours of 40 per year, and the Board may exempt persons who are retired or inactive from said continuing professional education requirement. The Board may also permit any certified public accountant to accumulate hours of continuing professional education in any calendar year of as much as two additional years annual requirement in advance of or subsequent to the required calendar year.

c. Any applicant who offers satisfactory evidence on forms promulgated by the Board that he has participated in a continuing professional education program of the type

required by the Board shall be deemed to have complied with this section.

(8c) The Board may formulate rules and regulations for report review and peer review of audits, reviews, compilations, and other reports issued on financial information in the public practice of accountancy of all firms, as herein defined, subject to the following provisions:

a. After June 30, 1992, any firm desiring to obtain or maintain a registration as a firm must offer satisfactory evidence to the Board that such firm has complied with the peer review and report review requirements approved by the Board; provided, however, that the Board shall give to every firm subject to this section not less than 12 months advance notice of each peer review and report review required of the firm.

b. The Board may grant a conditional registration for not more than 24 months for firms which are being registered for the first time, or moving into North Carolina, or for other good cause, in order that such firm may comply with the report review and peer review requirements, and in order that the Board may develop a system of review rotation among the various firms that must comply with this section.

c. The peer review and report review shall be valid for a minimum of three years subject to the power of the Board to require remedial action by any firm with a deficiency in the review according to the rules established by the Board.

d. The Board shall promulgate rules and regulations for the administration of the report review and peer review requirements and the Board shall exempt firms that show to the satisfaction of the Board that they are not engaged in the public practice of accountancy or that the scope of their practice does not come within the peer review and report review guidelines established by the Board.

e. Any firm that offers satisfactory evidence to the Board that the firm has satisfactorily participated in and successfully completed a peer review or a report review of the type required by the Board shall be deemed to have complied with this section and the Board shall promulgate rules and regulations for the administration of this procedure.

f. For purposes of this section, a firm means an entity, individual proprietorship, partnership or professional association through which one or more certificate holder engages in the public practice of accountancy through an office or offices.

(9) Adoption of Rules of Professional Conduct; Disciplinary Action. -- The Board shall have the power to adopt rules of professional ethics and conduct to be observed by certified public accountants and public accountants in this State. The Board shall have the power to revoke, either permanently or for a specified period, any certificate issued under the provisions of this Chapter to a certified public accountant or public accountant or to censure the holder of any such certificate or to assess a civil penalty not to exceed one thousand dollars ($1,000) for any one or combination of the following causes:

a. Conviction of a felony under the laws of the United States or of any state of the United States.
b. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.
c. Fraud or deceit in obtaining a certificate as a certified public accountant.
d. Dishonesty, fraud or gross negligence in the public practice of accountancy.
e. Violation of any rule of professional ethics and professional conduct adopted by the Board.

Any disciplinary action taken shall be in accordance with the provisions of Chapter 150B of the General Statutes. Any civil penalty assessed under this section shall be collected by the Board and transferred to the State Treasurer for use in the General Fund.

(10) Within 60 days after March 10, 1925, the Board shall formulate rules for the registration of those persons, firms, copartnerships, associations or corporations who, not being holders of valid and unrevoked certificates as certified public accountants issued under the provisions of Chapter 157 of the Public Laws of 1913, and who, having on March 10, 1925, been engaged in the practice of public accounting and maintaining an office as a public accountant in the State of North Carolina, shall, under the provisions of G.S. 93-7 apply to the Board for registration as public accountants. The Board shall maintain a register of all persons, firms, copartnerships, associations or corporations who have made application for such registration and have

complied with the rules of registration adopted by the Board.

(11) Within 60 days after March 10, 1925, the Board shall formulate rules for registration of these public accountants who are qualified to practice under this Chapter and who under the provisions of G.S. 93-10 are permitted to engage in work within the State of North Carolina. The Board shall have the power to deny or withdraw the privilege herein referred to for good and sufficient reasons.

(12) To submit annually on or before the first day of May to the Secretary of Revenue the names of all persons who have qualified under this Chapter as certified public accountants or public accountants. Privilege license issued under G.S. 105-41 shall designate whether such license is issued to a certified public accountant, a public accountant, or an accountant.

(13) The Board shall keep a complete record of all its proceedings and shall annually submit a full report to the Governor.

(14) All fees collected on behalf of the Board and all receipts of every kind and nature, as well as the compensation paid the members of the Board and the necessary expenses incurred by them in the performance of the duties imposed upon them, shall be reported annually to the State Treasurer. All fees and other moneys received by the Board pursuant to the provisions of the General Statutes shall be kept in a separate fund by the treasurer of the Board, to be held and expended only for such purposes as are proper and necessary to the discharge of the duties of the Board and to enforce the provisions of this Chapter. No expense incurred by the Board shall be charged against the State.

(15) Any certificate of qualification issued under the provisions of this Chapter, or issued under the provisions of Chapter 157 of the Public Laws of 1913, shall be forfeited for the failure of the holder to renew same and to pay the renewal fee therefor to the State Board of Accountancy within 30 days after demand for such renewal fee shall have been made by the State Board of Accountancy."

Sec. 2. This act shall become effective September 1, 1989.

In the General Assembly read three times and ratified this the 12th day of July, 1989.

S.B. 489 **CHAPTER 625**

AN ACT TO CHANGE THE MENTAL HEALTH LAW TO REFLECT THE INCORPORATION OF DEVELOPMENTAL DISABILITIES.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 122C of the General Statutes reads as rewritten:

"*Chapter 122C.*

"*Mental Health, ~~Mental Retardation,~~ Developmental Disabilities, and Substance Abuse Act of 1985.*"

Sec. 2. Article 1 of Chapter 122C of the General Statutes, as amended by Section 8 of Chapter 141, Session Laws of 1989, and as amended by Section 1 of Chapter 223, Session Laws of 1989, reads as rewritten:

"ARTICLE 1.

"General Provisions.

"§ *122C-1. Short title.*

This Chapter may be cited as the Mental Health, ~~Mental Retardation,~~ Developmental Disabilities, and Substance Abuse Act of 1985.

"§ *122C-2. Policy.*

The policy of the State is to assist individuals with mental illness, ~~mental retardation,~~ developmental disabilities, and substance abuse problems in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. Within available resources it is the obligation of State and local government to provide services to eliminate, reduce, or prevent the disabling effects of mental illness, ~~mental retardation,~~ developmental disabilities, and substance abuse through a service delivery system designed to meet the needs of clients in the least restrictive available setting, if the least restrictive setting is therapeutically most appropriate, and to maximize their quality of life.

State and local governments shall develop and maintain a unified system of services centered in area programs. The public service system will strive to provide a continuum of services for clients while considering the availability of services in the private sector.

The furnishing of services to implement the policy of this section requires the cooperation and financial assistance of counties, the State, and the federal government.

"§ *122C-3. Definitions.*

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) 'Area authority' means the area mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse authority.

(2) 'Area board' means the area mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse board.

(3) 'Camp Butner reservation' means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State.

(4) 'City' has the same meaning as in G.S. 153A-1(1).

(5) 'Catchment area' means the geographic part of the State served by a specific area authority.

(6) 'Client' means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.

(7) 'Client advocate' means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.

(8) 'Commission' means the Commission for Mental Health, ~~Mental Retardation,~~ Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(9) 'Confidential information' means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. 'Confidential information' does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

(10) 'County of residence' of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.

(11) 'Dangerous to himself or others' means:

a. 'Dangerous to himself' means that within the recent past:
   1. The individual has acted in such a way as to show:
      I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
      II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or
   2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
   3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

   Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. 'Dangerous to others' means that within the recent past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when

determining reasonable probability of future dangerous conduct.

(12) 'Department' means the North Carolina Department of Human Resources.

(12a) 'Developmental disability' means a severe, chronic disability of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and ~~coordinated.~~ coordinated; or

f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(13) 'Division' means the Division of Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services of the Department.

(13a) 'Eligible psychologist' means a licensed practicing psychologist who has at least two years' clinical experience.

(14) 'Facility' means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, ~~the mentally retarded,~~ the developmentally disabled, or substance abusers, and includes:

a. An 'area facility', which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;

b. A 'licensable facility', which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or ~~mentally retarded,~~ developmentally disabled, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

c. A 'private facility', which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;

e. A 'residential facility', which is a 24-hour facility that is not a hospital, including a group home;

f. A 'State facility', which is a facility that is operated by the Secretary;

g. A '24-hour facility', which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the ~~mental retarded,~~ developmentally disabled, or substance abusers.

~~For the purposes of Articles 2 and 3 of this Chapter only, excluding G.S. 122C-63, 'facility' also means any person at one location, whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation for individuals with developmental disabilities, developed under the authority of this Chapter.~~

(15) 'Guardian' means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A, 33, or 35A of the General Statutes.

(16) 'Habilitation' means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.

(17) 'Incompetent adult' means an adult individual adjudicated incompetent.

(18) 'Intoxicated' means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.

(19) 'Law-enforcement officer' means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.

(20) 'Legally responsible person' means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; or (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment.

(21) 'Mental illness' means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.

(22) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(23) 'Mentally retarded with accompanying behavior disorder' means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.

(24) 'Next of kin' means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, 'next of kin' means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.

(25) 'Operating costs' means expenditures made by an area authority in the delivery of services for mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.

(26) Repealed by Session Laws 1987, c. 345, s. 1.

(27) 'Outpatient treatment' as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.

(28) 'Person' means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.

(29) 'Physician' means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.

(30) 'Provider of support services' means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.

(30a) 'Psychologist' means an individual licensed to practice psychology under Chapter 90. The term 'eligible psychologist' is defined in subdivision (13a).

(31) 'Qualified professional' means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or ~~mental retardation~~ developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological

associates, educators, social workers, registered nurses, and certified counselors.

(32) 'Responsible professional' means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.

(33) 'Secretary' means the Secretary of the Department of Human Resources.

(34) 'Single portal of entry and exit policy' means an admission and discharge policy for State and area facilities that may be adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions shall be designed to promote quality client care in and among State and area facilities. Furthermore, the policy shall be designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client can receive services from the facility that is best able to meet his needs. However, the policy may not be inconsistent with any other provisions of the General Statutes, nor may the policy include the complete exclusion of clients from admission to any specific State or area facility.

(35) 'Single portal area' means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy.

(36) 'Substance abuse' means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. 'Substance abuse' may include a pattern of tolerance and withdrawal.

(37) 'Substance abuser' means an individual who engages in substance abuse.

"§ *122C-4. Use of phrase 'client or his legally responsible person.'*

Except as otherwise provided by law, whenever in this Chapter the phrase 'client or his legally responsible person' is used, and the client is a minor or an incompetent adult, the duty or right involved shall be exercised not by the client, but by the legally responsible person."

Sec. 3. The title of Article 2 of Chapter 122C reads as rewritten:

"ARTICLE 2.

"Licensure of Facilities for the Mentally Ill, the ~~Mentally Retarded,~~ Developmentally Disabled, and Substance Abusers."

Sec. 4. G.S. 122C-21 reads as rewritten:

"*§ 122C-21. Purpose.*

The purpose of this Article is to provide for licensure of facilities for the mentally ill, ~~mentally retarded,~~ developmentally disabled, and substance abusers by the development, establishment, and enforcement of basic rules governing:

(1) The provision of services to individuals who receive services from licensable facilities as defined by this Chapter, and

(2) The construction, maintenance, and operation of these licensable facilities that in the light of existing knowledge will ensure safe and adequate treatment of these individuals."

Sec. 5. G.S. 122C-22(a) reads as rewritten:

"(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

(1) Physicians and psychologists engaged in private office practice;

(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, ~~mentally retarded,~~ developmentally disabled, or substance abusers;

(3) State and federally-operated facilities;

(4) Domiciliary care homes licensed under Chapter 131D of the General Statutes;

(5) Developmental child day care centers licensed under Article 7 of Chapter 110 of the General Statutes;

(6) Persons subject to licensure under rules of the Social Services Commission;

(7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services; and

(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14)."

Sec. 6. G.S. 122C-23(a) reads as rewritten:

"(a) No person shall establish, maintain, or operate a licensable facility for the mentally ill, ~~mentally retarded~~ developmentally disabled, or substance abusers without a current license issued by the Secretary."

Sec. 7. G.S. 122C-51 reads as rewritten:

"*§ 122C-51. Declaration of policy on clients' rights.*

It is the policy of the State to assure basic human rights to each client of a facility. These rights include the right to dignity, privacy, humane care, and freedom from mental and physical abuse, neglect, and exploitation. Each facility shall assure to each client the right to live as normally as possible while receiving care and treatment.

It is further the policy of this State that each client who is admitted to and is receiving services from a facility has the right to treatment, including access to medical care and habilitation, regardless of age or degree of mental illness, ~~mental retardation,~~ developmental disabilities, or substance abuse. Each client has the right to an individualized written treatment or habilitation plan setting forth a program to maximize the development or restoration of his capabilities."

Sec. 8. G.S.122C-55(c) reads as rewritten:

"(c) A facility may furnish confidential information in its possession to the Department of Correction when requested by that department regarding any client of that facility when the inmate has been determined by the Department of Correction to be in need of treatment for mental illness, ~~mental retardation,~~ developmental disabilities, or substance abuse. The Department of Correction may furnish to a facility confidential information in its possession about treatment for mental illness, ~~mental retardation,~~ developmental disabilities, or substance abuse that the Department of Correction has provided to any present or former inmate if the inmate is presently seeking treatment from the requesting facility or if the inmate has been involuntarily committed to the requesting facility for inpatient or outpatient treatment. Under the circumstances described in this subsection, the consent of the client or inmate shall not be required in order for this information to be furnished and the information shall be furnished despite objection by the client or inmate. Confidential information disclosed pursuant to this subsection is restricted from further disclosure."

Sec. 9. G.S. 122C-56(b) reads as rewritten:

"(b) The Secretary may have access to confidential information from private or public agencies or agents for purposes of research and evaluation in the areas of mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse. No confidential information shall be further disclosed."

Sec. 10. G.S. 122C-62 reads as rewritten:

"§ *122C-62. Additional rights in 24-hour facilities.*

(a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61, each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the right to:

(1) Send and receive sealed mail and have access to writing material, postage, and staff assistance when necessary;

(2) Contact and consult with, at his own expense and at no cost to the facility, legal counsel, private physicians, and private mental health, ~~mental retardation,~~ developmental disabilities, or substance abuse professionals of his choice; and

(3) Contact and consult with a client advocate if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each adult client may exercise these rights at all reasonable times.

(b) Except as provided in subsections (e) and (h) of this section, each adult client who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right to:

(1) Make and receive confidential telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over therapies;

(3) Communicate and meet under appropriate supervision with individuals of his own choice upon the consent of the individuals;

(4) Make visits outside the custody of the facility unless:

a. Commitment proceedings were initiated as the result of the client's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding;

b. The client was voluntarily admitted or committed to the facility while under order of commitment to a correctional facility of the Department of Correction; or

c. The client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

A court order may expressly authorize visits otherwise prohibited by the existence of the conditions prescribed by this subdivision;

(5) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;

(6) Except as prohibited by law, keep and use personal clothing and possessions;

(7) Participate in religious worship;

(8) Keep and spend a reasonable sum of his own money;

(9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes; and

(10) Have access to individual storage space for his private use.

(c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to have access to proper adult supervision and guidance. In recognization of the minor's status as a developing individual, the minor shall be provided opportunities to enable him to mature physically, emotionally, intellectually, socially, and vocationally. In view of the physical, emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide appropriate structure, supervision and control consistent with the rights given to the minor pursuant to this Article. The facility shall also, where practical, make reasonable efforts to ensure that each minor client receives treatment apart and separate from adult clients unless the treatment needs of the minor client dictate otherwise.

Each minor client who is receiving treatment or habilitation from a 24-hour facility has the right to:

(1) Communicate and consult with his parents or guardian or the agency or individual having legal custody of him;

(2) Contact and consult with, at his own expense or that of his legally responsible person and at no cost to the facility, legal counsel, private physicians, private mental health, ~~mental retardation,~~ developmental disabilities, or substance abuse professionals, of his or his legally responsible person's choice; and

(3) Contact and consult with a client advocate, if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each minor client may exercise these rights at all reasonable times.

(d) Except as provided in subsections (e) and (h) of this section, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to:

(1) Make and receive telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

(2) Send and receive mail and have access to writing materials, postage, and staff assistance when necessary;

(3) Under appropriate supervision, receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over school or therapies;

(4) Receive special education and vocational training in accordance with federal and State law;

(5) Be out of doors daily and participate in play, recreation, and physical exercise on a regular basis in accordance with his needs;

(6) Except as prohibited by law, keep and use personal clothing and possessions under appropriate supervision;

(7) Participate in religious worship;

(8) Have access to individual storage space for the safekeeping of personal belongings;

(9) Have access to and spend a reasonable sum of his own money; and

(10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes.

(e) No right enumerated in subsections (b) or (d) of this section may be limited or restricted except by the qualified professional responsible for the formulation of the client's treatment or habilitation plan. A written statement shall be placed in the client's record that indicates the detailed reason for the restriction. The restriction shall be reasonable and related to the client's treatment or habilitation needs. A restriction is effective for a period not to exceed 30 days. An evaluation of each restriction shall be conducted by the qualified professional at least every seven days, at which time the restriction may be removed. Each evaluation of a restriction shall be documented in the client's record. Restrictions on rights may be renewed only by a written statement entered by the qualified professional in the client's record that states the reason for the renewal of the restriction. In the case of an adult client who has not been adjudicated incompetent, in each instance of an initial restriction or renewal of a restriction of rights, an individual designated by the client shall, upon the consent of the client, be notified of the restriction and of the reason for it. In the case of a minor client or an incompetent adult client, the legally responsible person shall be notified of each instance of an initial restriction or renewal of a restriction of rights and of the reason for it. Notification of the designated individual or legally responsible person shall be documented in writing in the client's record.

(f) The Commission may adopt rules to implement subsection (e) of this section.

(g) With regard to clients being held to determine capacity to proceed pursuant to G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior provisions of this section, the Commission may adopt rules restricting the rights set forth under (b) (2) and (d) (3) of this section if restrictions are

necessary and reasonable in order to protect the health, safety, and welfare of the client involved or other clients.

(h) The rights stated in subdivisions (b) (2), (b) (4), (b) (5), (b) (10), (d) (3), (d) (5) and (d) (8) may be modified in a general hospital by that hospital to be the same as for other patients in that hospital; provided that any restriction of a specific client's rights shall be done in accordance with the provisions of subsection (e) of this section."

Sec. 11. G.S. 122C-65(a) reads as rewritten:

"(a) For the protection of clients receiving treatment or habilitation in a 24-hour facility, it is unlawful for any individual who is not a ~~mentally retarded~~ developmentally disabled client in a facility:

(1) To assist, advise, or solicit, or to offer to assist, advise, or solicit a client of a facility to leave without authority;

(2) To transport or to offer to transport a client of a facility to or from any place without the facility's authority;

(3) To receive or to offer to receive a minor client of a facility into any place, structure, building, or conveyance for the purpose of engaging in any act that would constitute a sex offense, or to solicit a minor client of a facility to engage in any act that would constitute a sex offense;

(4) To hide an individual who has left a facility without authority; or

(5) To engage in, or offer to engage in an act with a client of a facility that would constitute a sex offense."

Sec. 12. The title of Article 4 of Chapter 122C of the General Statutes reads as rewritten:

"ARTICLE 4.

"Organization and System for Delivery of Mental Health, ~~Mental Retardation,~~ Developmental Disabilities, and Substance Abuse Services."

Sec. 13. G.S. 122C-101 reads as rewritten:

"§ *122C-101. Policy.*

Within the public system of mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse services, there are both area and State facilities. An area authority is the locus of coordination among public services for clients of its catchment area. To assure the most appropriate and efficient care of clients within the publicly supported service system, area authorities are encouraged to develop and secure approval for a single portal of entry and exit policy for their catchment areas."

Sec. 14. Part 2 of Article 4 of Chapter 122C of the General Statutes reads as rewritten:

"Part 2. State, County and Area Authority.

"§ *122C-111. Administration.*

The Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission and shall operate State facilities. An area director shall administer the programs of the area authority and enforce the rules of the area board, applicable State laws, rules of the Commission, and rules of the Secretary. The Secretary in cooperation with area directors and State facility directors shall provide for the coordination of services between area authorities and State facilities.

"*§ 122C-112. Powers and duties of the Secretary.*

(a) The Secretary shall:

(1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;

(2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;

(3) Operate State facilities and adopt rules pertaining to their operation;

(4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;

(5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;

(6) Adopt rules governing the expenditure of all area authority funds;

(7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;

(8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.

(9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;

(10) Promote public awareness and understanding of mental health, mental illness, ~~mental retardation,~~ developmental disabilities, and substance abuse;

(11) Administer and enforce rules that are conditions of participation in federal or State financial aid; and

(12) Carry out G.S. 122C-361.

(b) The Secretary may:

(1) Acquire by purchase or otherwise in the name of the Department equipment, supplies, and other personal property necessary to carry out the mental health, ~~mental~~

~~retardation.~~ developmental disabilities, and substance abuse programs;

(2) Sponsor training opportunities in the fields of mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse;

(3) Promote and conduct research in the fields of mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse;

(4) Provide technical assistance for the development and improvement of prevention services;

(5) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description which shall be used by the Secretary for the purpose of carrying out mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office;

(6) Accept, allocate, and spend any federal funds for mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the State Treasurer and shall be appropriated by the General Assembly for the mental health, ~~mental retardation,~~ developmental disabilities, or substance abuse purposes specified;

(7) Enter agreements authorized by G.S. 122C-346.

(8) Accept, allocate, and spend funds from the United States Department of Defense to operate mental health demonstration projects for families of the uniformed services. Demonstration projects shall be operated through an area authority. The operation of these demonstration projects may be accomplished through subcontracts with one or more private sector providers.

"§ *122C-113. Cooperation between Secretary and other agencies.*

(a) The Secretary shall cooperate with other State agencies to coordinate services for the treatment and habilitation of individuals who are mentally ill, ~~mentally retarded,~~ developmentally disabled, or substance abusers. The Secretary shall also coordinate with these agencies to provide public education to promote a better understanding of mental illness, ~~mental retardation,~~ developmental disabilities, and substance abuse.

(b) The Secretary shall promote cooperation among area facilities, State facilities, and local agencies to facilitate the provision of services to individuals who are mentally ill, ~~mentally retarded,~~ developmentally disabled, or substance abusers.

(b1) The Secretary shall cooperate with the State Board of Education in coordinating the responsibilities of the Department of Human Resources and of the Department of Public Education for adolescent substance abuse programs. The Department of Human Resources, through its Division of Mental Health, ~~Mental Retardation,~~ Developmental Disabilities, and Substance Abuse Services, shall be responsible for intervention and treatment in non-school based programs. The Department of Public Education shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs.

(c) The Secretary shall adopt rules to assure this coordination.

"§ *122C-114. Powers and duties of the Commission.*

The Commission shall have authority as provided by this Chapter, Chapters 90 and 148 of the General Statutes, and by G.S. 143B-147.

"§ *122C-115. Powers and duties of counties and cities.*

(a) Except as provided in G.S. 153A-77, a county shall provide mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse services through an area authority.

(b) Counties and cities may appropriate funds for the support of programs that serve the catchment area, whether the programs are physically located within a single county or whether any facility housing a program is owned and operated by the city or county. Counties and cities may make appropriations for the purposes of this Chapter and may allocate for these purposes other revenues not restricted by law, and counties may fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22).

(c) Within a catchment area designated by the Commission, a board of county commissioners or two or more boards of county commissioners jointly shall establish an area authority with the approval of the Secretary.

"§ *122C-116. Status of area authority.*

An area authority is a local political subdivision of the State except that a single county area authority is considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.

"§ *122C-117. Powers and duties of the area authority.*

(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental

health, ~~mental retardation,~~ developmental ~~disability,~~ disabilities, and substance abuse services;

(2) Provide services to clients in the catchment area;

(3) Determine the needs of the area authority's clients and coordinate with the Secretary the provision of services to clients through area and State facilities;

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;

(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;

(6) Comply with federal requirements as a condition of receipt of federal grants; and

(7) Appoint an area director.

(b) The governing unit of the area authority is the area board. All powers, duties, functions, rights, privileges, or immunities conferred on the area authority may be exercised by the area board.

"§ *122C-118. Structure of area board.*

(a) An area board shall have no less than 15 members and no more than 25 members. The size of the area board may be changed from time to time as follows:

(1) In a single-county area, by the board of county commissioners;

(2) In a multi-county area by agreement of the boards of county commissioners of all the counties in the catchment area. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) In a single county area, the board of county commissioners shall appoint the members of the area board who may be removed with or without cause.

(c) In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. A member may be removed, with or without cause, by the group authorized to make the initial appointment.

(d) The group of county commissioners authorized to make appointments to the area board shall appoint new members to the area board to fill vacancies occurring on the board before the end of the appointed term of office. These appointments are for the rest of the unexpired term of office.

(e) The area board shall include:

(1) At least one county commissioner from each county in the area except that in a single-county area authority the board

of commissioners may instead appoint any resident of the county;

(2) At least two physicians licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina;

(3) At least one professional representative from the fields either of psychology, social work, nursing, or religion;

(4) At least one individual each representing the interests of or from citizens' organizations representing the interests of individuals with;

a. Mental illness;

b. Mental retardation;

c. Alcoholism; and

d. Drug abuse;

(5) At least one representative from local hospitals or area planning organizations; and

(6) At least one attorney licensed to practice in North Carolina.

(f) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for four years, except that upon the initial formation of an area board one fourth shall be appointed for one year, one fourth for two years, one fourth for three years, and all remaining members for four years.

"§ *122C-119. Organization of area board.*

(a) The area board shall meet at least six times per year.

(b) Meetings shall be called by the area board chairman or by three or more members of the board after notifying the area board chairman in writing.

(c) Members of the area board elect the board's chairman. The term of office of the area board chairman shall be one year. A county commissioner area board member may serve as the area board chairman.

"§ 122C-120. Compensation of area board members.

(a) Area board members may receive as compensation for their services per diem and a subsistence allowance for each day during which they are engaged in the official business of the area board. The amount of the per diem and subsistence allowances shall be established by the area board and the amounts shall not exceed those authorized by G.S. 138-5 for State boards.

(b) Area board members may be reimbursed for all necessary travel expenses and registration fees in amounts fixed by the board.

"§ *122C-121. Area director.*

The area director is an employee of the area board and shall serve at the pleasure of the area board. The director is responsible for the staff appointments, for implementation of the policies and programs of the board in compliance with rules of the Commission and the Secretary, and for the supervision of all service programs and staff.

"§ *122C-122. Public guardians.*

The officers and employees of the Division, or any successor agency, and the area director or any officer or employee of an area authority designated by the area board, or any officer or employee of any area facility designated by the area board, may, if they are a disinterested public agent as defined by G.S. 35A-1202(4), serve as guardians for adults adjudicated incompetent under the provisions of Subchapter I of Chapter 35A of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a proceeding brought under that Subchapter. Bond shall be required or purchased as provided by G.S. 35A-1239.

"§ *122C-123. Other agency responsibility.*

Notwithstanding the provisions of G.S. 122C-112(a)(10), ~~and,~~ G.S. 122C-117(a)(1), and G.S. 122C-131, other agencies of the Department, other State agencies, and other local agencies shall continue responsibility for services they provide for persons with developmental disabilities."

Sec. 15. Part 3 of Article 4 of Chapter 122C of the General Statutes reads as rewritten:

"Part 3. Service Delivery System.

"§ *122C-131. Composition of system.*

Mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse services of the public system in this State shall be delivered through area authorities and State facilities.

"§ *122C-132. Single portal of entry and exit designation.*

(a) The public system should provide for a single portal of entry and exit policy. In order to accomplish this objective, an area authority desiring designation as a single portal area shall present to the Secretary a single portal of entry and exit plan approved by the area board. The decision as to whether to choose to submit a plan is in the discretion of the area authority after weighing the policy goal stated in this subsection and in G.S. 122C-101.

(b) In order for a single portal area to be designated, the single portal of entry and exit plan shall be subject to approval by the Secretary. Once an area is designated by the Secretary as a single portal area, any changes to the plan shall be subject to approval by the Secretary. However, an approved plan and designation as a single portal area shall remain in force pending approval of any changes.

(c) The plan shall include but not be limited to:

(1) A specific listing of facilities to be covered by the single portal of entry and exit plan;
(2) Procedures for review of individuals to be admitted to or discharged from State and area facilities;
(3) Procedures for shared responsibility when individuals are admitted directly to a State facility;
(4) Evidence of incorporation of these plans within the contracts between the area authority and the State facilities as required by G.S. 122C-143(c) and with other public and private agencies as required in G.S. 122C-141;
(5) Evidence of cooperative arrangements with local law enforcement, local courts, and the local medical society; and
(6) Procedures for review of citizen complaints.

(d) Residents of a county in a designated single portal area shall be admitted to or discharged from State and area facilities through the area authority as described in the area's single portal of entry and exit policy."

Sec. 16. G.S. 122C-141(c) reads as rewritten:

"(c) The area authority may contract with a health maintenance organization, certified and operating in accordance with the provisions of Chapter 57B of the General Statutes for the area authority, to provide mental health, ~~mental retardation,~~ developmental disabilities, or substance abuse services to enrollees in a health care plan provided by the health maintenance organization. The terms of the contract must meet the requirements of all applicable State statutes and rules of the Commission and Secretary governing both the provision of services by an area authority and the general and fiscal operation of an area authority and the reimbursement rate for services rendered shall be based on the usual and customary charges paid by the health maintenance organization to similar providers. Any provision in conflict with a State statute or rule of the Commission or the Secretary shall be void; however, the presence of any void provision in that contract does not render void any other provision in that contract which is not in conflict with a State statute or rule of the Commission or the Secretary. Subject to approval by the Secretary and pending the timely reimbursement of the contractual charges, the area authority may expend funds for costs which may be incurred by the area authority as a result of providing the additional services under a contractual agreement with a health maintenance organization."

Sec. 17. G.S. 122C-147 reads as rewritten:

"*§ 122C-147. Allocation of funds to area authorities.*

(a) All State and federal funds appropriated within the Department's budget for area mental health, ~~mental retardation,~~ developmental

disabilities, and substance abuse services shall be allocated to area authorities in accordance with the annual plan and budget adopted by the area authority and approved by the Secretary. An area authority may receive and allocate non-State resources for capital purchases, capital improvements, and equipment acquisitions if the expenditures are made in the support of the annual plan. The final share of State and federal funds shall be allocated on the basis of actual expenditures and reported in a way prescribed by the Secretary. Unspent State and federal funds shall be remitted to the Department within 60 days after the date that a certified audit is rendered as required by the Local Government Commission. If an audit is not submitted to the State within five days of the due date for the audit as approved by the Local Government Commission, Department funds for the area authority may be withheld by the Secretary until the audit is submitted.

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

(1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a 24-hour and day facility or (ii) in contracting with a private, nonprofit corporation that operates 24-hour and day facilities for the mentally ill, ~~mentally retarded,~~ developmentally disabled, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation, for the purchase, alteration, improvement, rehabilitation of real estate or, to make a lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit corporation.

(2) Upon cessation of the use of the 24-hour and day facility by the area authority, if operated by the area authority, or upon termination, default, or nonrenewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the 24-hour and day facility.

(c) All real property purchased for use by the area authority shall be provided by local or federal funds unless otherwise allowed under subsection (b) of this section. The title to this real property and the authority to acquire it is held by the county where the property is located. The authority to hold title to real property and the authority to acquire it may be held by the area authority with the consent of the board or boards of commissioners of all the counties which comprise the area authority. The consent to this variation shall be by resolution

of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority.

(d) The area authority may lease real property.

(e) Equipment necessary for the operation of the area authority may be obtained with local, State, federal, or donated funds, or a combination of these.

(f) The area authority may acquire or lease personal property, including by lease-purchase agreement. Title to personal property may be held by the area authority.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal as provided by G.S. 122C-145 and Chapter 150B of the General Statutes.

(h) Notwithstanding subsection (b) of this section and in addition to the purposes listed in that subsection, the funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property owned or to be owned by a nonprofit corporation and used or to be used as a facility.

(i) Notwithstanding subsection (c) of this section and in addition to the purposes listed in that subsection, funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property used by an area authority as long as the title to the real property is vested in the county where the property is located or is vested in another governmental entity. If the property ceases to be used in accordance with the annual plan, the unamortized part of funds spent under this subsection for the purchase, alteration, improvement, or rehabilitation of real property shall be returned to the Department, in accordance with the rules of the Secretary.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Secretary, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation under contract with the area authority and used or to be used as a 24-hour and day facility. Prior to the use of county appropriated funds for this purpose, the area authority must obtain consent of the board or boards of commissioners of all the

counties which comprise the area authority. The consent shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property."

Sec. 18. G.S. 122C-149 reads as rewritten:

"§ *122C-149. Allocation of matching funds to area authorities.*

(a) State-appropriated matching funds shall be distributed subject to rules of the Secretary which set a formula based on the relative fiscal capacity of the county to fund mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse services. The rules shall be reviewed biennially by the Secretary. Area authority funds used for matching State funds shall include fees from services including Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds. Except as specifically provided, area financial participation to match State allocations may not include State or federal funds.

(b) Area authorities may not use funds received under G.S. 20-179.2(f) or G.S. 90-96.01(a)(4) to match funds under this section."

Sec. 19. G.S. 122C-151 reads as rewritten:

"§ *122C-151. Responsibilities of those receiving appropriations.*

All resources allocated to and received by any area authority and used for programs of mental health, ~~mental retardation,~~ developmental disabilities, substance abuse or other related fields are subject to the conditions specified in this Article and to the rules of the Commission and the Secretary."

Sec. 20. G.S. 122C-202 reads as rewritten:

"§ *122C-202. Applicability of Article.*

This Article applies to all facilities unless expressly provided otherwise. Specific provisions that are delineated by the disability of the client, whether mentally ill, mentally retarded, developmentally disabled, or substance abuser, also apply to all facilities for that client's disability. Provisions that refer to a specific facility or type of facility apply only to the designated facility or facilities."

Sec. 21. G.S. 122C-203 reads as rewritten:

"§ *122C-203. Admission or commitment and incompetency proceedings to have no effect on one another.*

The admission or commitment to a facility of an alleged mentally ill individual, an alleged substance abuser, or an alleged mentally retarded or developmentally disabled individual under the provisions of this Article shall in no way affect incompetency proceedings as set forth in Chapters 33 or 35A of the General Statutes and incompetency

proceedings under those Chapters shall have no effect upon admission or commitment proceedings under this Article."

Sec. 22. Part 5 of Article 5 of Chapter 122C of the General Statutes reads as rewritten:

"Part 5. Voluntary Admissions and Discharges, Minors and Adults, Facilities for Individuals with ~~Mental Retardation~~ Developmental Disabilities.

"§ *122C-241. Admissions.*

(a) Except as provided in subsection (c) of this section an individual with ~~mental retardation~~ developmental disabilities may be admitted to a facility for the ~~mentally retarded~~ developmentally disabled in order that he receive care, habilitation, rehabilitation, training, or treatment. Application for admission is made as follows:

(~~i~~ 1) A minor with ~~mental retardation~~ developmental disabilities may be admitted upon application by both the father and the mother if they are living together and, if not, by the parent or parents having custody or by the legally responsible person.

(~~ii~~ 2) An adult with ~~mental retardation~~ developmental disabilities who has been adjudicated incompetent under Chapters 33 or 35 of the General Statutes may be admitted upon application by his guardian.

(~~iii~~ 3) An adult with ~~mental retardation~~ developmental disabilities who has not been adjudicated incompetent under Chapters 33 or 35 of the General Statutes may be admitted upon his own application.

(b) Prior to admission to a 24-hour facility, the individual shall be examined and evaluated by a physician or psychologist to determine whether the individual is ~~mentally retarded~~ developmentally disabled. In addition, the individual shall be examined and evaluated by a qualified ~~mental retardation~~ developmental disabilities professional no sooner than 31 days prior to admission or within 72 hours after admission to determine whether the individual is in need of care, habilitation, rehabilitation, training or treatment by the facility. If the evaluating professional determines that the individual will not benefit from an admission, the individual shall not be admitted as a client.

(c) An admission to an area or State 24-hour facility of an individual from a single portal area shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself or is presented for admission to a State facility for the mentally retarded directly and is in need of an emergency admission, he may be accepted for admission. The State facility shall notify the area authority within 24 hours of the admission and further

planning of treatment for the individual is the joint responsibility of the area authority and the State facility as prescribed in the area plan.

"§ *122C-242. Discharges.*

(a) Except as provided in subsections (b) through (d) of this section, discharges from facilities for individuals with ~~mental retardation~~ developmental disabilities are made upon request of the individual authorized in G.S. 122C-241(a) to make application for admission or by the director of the facility.

(b) Any adult who has not been declared incompetent and who is admitted to a 24-hour facility shall be discharged upon his own request, unless the director of the facility has reason to believe that the adult is endangering himself by the discharge. In this case the individual may be held for a period not to exceed five days while the director petitions for the adjudication of incompetency of the individual and the appointment of an interim guardian under Chapters 33 or 35 of the General Statutes.

(c) Any individual admitted to a 24-hour facility may be discharged when in the judgment of the director of the facility the individual is no longer in need of care, treatment, habilitation or rehabilitation by the facility or the individual will no longer benefit from the service available. In the case of an area or State facility rules adopted by the Commission or by the Secretary in accordance with G.S. 122C-63 shall be followed.

(d) When the individual to be discharged from an area or State 24-hour facility is a resident of a single portal area, the discharge shall follow the procedures described in the area plan."

Sec. 23. Part 4 of Article 3 of Chapter 143B of the General Statutes is rewritten to read:

"Part 4. Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services.

"§ *143B-147. Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services -- creation, powers and duties.*

(a) There is hereby created the Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources with the power and duty to adopt, amend and repeal rules to be followed in the conduct of State and local mental health, ~~mental retardation,~~ developmental disabilities, alcohol and drug abuse programs including education, prevention, intervention, treatment, rehabilitation and other related services. Such rules shall be designed to promote the amelioration or elimination of the mental health, ~~mental retardation,~~ developmental disabilities, or alcohol and drug abuse problems of the citizens of this State. The Commission for Mental Health, ~~Mental Retardation~~

Developmental Disabilities, and Substance Abuse Services shall have the authority:

(1) To adopt rules regarding the
   a. Admission, including the designation of regions, treatment, and professional care of individuals admitted to a facility operated under the authority of G.S. 122C-181(a), that is now or may be established;
   b. Operation of education, prevention, intervention, treatment, rehabilitation and other related services as provided by area mental health, ~~mental retardation~~ developmental disabilities, and substance abuse authorities under Part 4 of Article 4 of Chapter 122C of the General Statutes;
   c. Hearings and appeals of area mental health, ~~mental retardation~~ developmental disabilities, and substance abuse authorities as provided for in Part 4 of Article 4 of Chapter 122C of the General Statutes;
   d. Requirements of the federal government for grants-in-aid for mental health, ~~mental retardation,~~ developmental disabilities, alcohol or drug abuse programs which may be made available to local programs or the State. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;

(2) To adopt rules for the licensing of facilities for the mentally ill, ~~mentally retarded~~ developmentally disabled, and substance abusers, under Article 2 of Chapter 122C of the General Statutes.

(3) To advise the Secretary of the Department of Human Resources regarding the need for, provision and coordination of education, prevention, intervention, treatment, rehabilitation and other related services in the areas of:
   a. Mental illness and mental health,
   b. ~~Mental retardation,~~ Developmental disabilities,
   c. Alcohol abuse, and
   d. Drug abuse;

(4) To review and advise the Secretary of the Department of Human Resources regarding all State plans required by federal or State law and to recommend to the Secretary any changes it thinks necessary in those plans; provided, however, for the purposes of meeting State plan requirements under federal or State law, the Department of Human Resources is designated as the single State agency responsible for administration of plans involving mental

health, ~~mental retardation,~~ developmental disabilities, alcohol abuse, and drug abuse services;

(5) To adopt rules relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as provided by G.S. 90-100;

(6) To adopt rules to establish the professional requirements for staff of licensed facilities for the mentally ill, ~~mentally retarded~~ developmentally disabled, and substance abusers. Such rules may require that one or more, but not all staff of a facility be either licensed or certified. If a facility has only one professional staff, such rules may require that that individual be licensed or certified. Such rules may include the recognition of professional certification boards for those professions not licensed or certified under other provisions of the General Statutes provided that the professional certification board evaluates applicants on a basis which protects the public health, safety or welfare;

(7) Except where rule making authority is assigned under that Article to the Secretary of the Department of Human Resources, to adopt rules to implement Article 3 of Chapter 122C of the General Statutes;

(8) To adopt rules specifying procedures for waiver of rules adopted by the Commission.

(b) All rules hereby adopted shall be consistent with the laws of this State and not inconsistent with the management responsibilities of the Secretary of the Department of Human Resources provided by this Chapter and the Executive Organization Act of 1973.

(c) All rules and regulations pertaining to the delivery of services and licensing of facilities heretofore adopted by the Commission for Mental Health and Mental Retardation ~~Services and~~ Services, controlled substances rules and regulations adopted by the North Carolina Drug ~~Commission~~ Commission, and all rules and regulations adopted by the Commission for Mental Health, Mental Retardation and Substance Abuse Services shall remain in full force and effect unless and until repealed or superseded by action of the Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services.

(d) All rules adopted by the Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services shall be enforced by the Department of Human Resources.

"*§ 143B-148. Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services -- members; selection; quorum; compensation.*

(a) The Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources shall consist of 25 members:

(1) Four of whom shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President of the Senate in accordance with G.S. 120-121. These members shall have concern for the problems of mental illness, ~~mental retardation,~~ developmental disabilities, alcohol and drug abuse. ~~The initial members appointed to the Commission by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall~~ Members shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122;

(2) Twenty-one of whom shall be appointed by the Governor, one from each congressional district in the State in accordance with G.S. 147-12(3)b, and 10 at-large members.

a. Of these 21 members, three shall have a special interest in mental health, three shall have a special interest in mental retardation, three shall have a special interest in developmental disabilities other than mental retardation, three shall have a special interest in alcohol abuse and alcoholism and three shall have a special interest in drug abuse. Each group of three shall be made up of one member who is a consumer representative; one other who is a representative of a local or State citizen organization or association; and one other who is a professional in the field.

b. The remaining ~~nine~~ six members shall be appointed from the general public, other citizen groups, area mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse authorities, or from other related agencies.

c. Of these 21 appointments, at least one shall be a licensed physician and at least one other shall be a licensed attorney.

d. The Governor shall appoint members to the Commission in accordance with the foregoing provisions. ~~At the initial formation of the Commission for Mental Health, Mental Retardation and Substance Abuse Services, the Governor shall designate seven of his appointees to serve for two years, seven to serve for three years and seven to~~

~~serve for four years, all to commence on July 1, 1981. Thereafter the~~ The terms of all Commission members appointed by the Governor shall be four years. All Commission members shall serve their designated terms and until their successors are duly appointed and qualified. All Commission members may succeed themselves.

(3) All appointments shall be made pursuant to current federal rules and regulations, when not inconsistent with State law, which prescribe the selection process and demographic characteristics as a necessary condition to the receipt of federal aid.

(b) Except as otherwise provided in this section, the provisions of G.S. 143B-13 through 143B-20 relating to appointment, qualifications, terms and removal of members shall apply to all members of the Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services.

(c) Commission members shall receive per diem, travel and subsistence allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(d) A majority of the Commission shall constitute a quorum for the transaction of business.

(e) All clerical and other services required by the Commission shall be supplied by the Secretary of the Department of Human Resources.

"*§ 143B-149. Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services -- officers.*

The Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members and shall serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term.

"*§ 143B-150. Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services -- regular and special meetings.*

The Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least eight members."

Sec. 24. G.S.120-123(22) reads as rewritten:

"(22) The Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services, as established by G.S. ~~143B-148~~ 143B-147."

Sec. 25. G.S. 153A-149(c)(22) reads as rewritten:

"(22) Mental Health.--To provide for the county's share of the cost of maintaining and administering services offered by or through the area mental health, ~~mental retardation~~ developmental disabilities, and substance abuse authority."

Sec. 25.1(a) G.S. 122C-118(e)(4)b as rewritten by Chapter 536, Session Laws of 1989 is rewritten to read:

"b. Developmental disabilities."

(b) G.S. 122C-118(e)(5)b, as rewritten by Chapter 536, Session Laws of 1989, is rewritten to read:

"b. Developmental disabilities;".

Sec. 26. This act shall become effective January 1, 1990 except that Section 25.1 is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1989.

S.B. 627 **CHAPTER 626**

AN ACT TO ELIMINATE HOSPITAL LEASE AUTHORITY IN GASTON COUNTY, AND AMENDING THE STATUTORY DEFINITION OF A SUBDIVISION IN LINCOLN COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 796, Session Laws of 1983, is repealed.

Sec. 1.1. G.S. 153A-335 reads as rewritten:

"*§ 153A-335. 'Subdivision' defined.*

For purposes of this Part, 'subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The division of land into parcels greater than ~~10~~ seven acres if no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for widening or opening streets; ~~and~~

(4) The division of a tract ~~in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations~~ of land into five or fewer lots (including the residual land included in the original tract) where:

a. All lots created equal or exceed the minimum dimensional standards contained in the county subdivision regulations;

b. All lots are residentially zoned in areas where zoning has been adopted, this sub-subdivision b. to apply only in areas which are zoned; and

c. No new roads are proposed to provide access to any of the lots created.

This subdivision (4) applies only to owners of real property as of the effective date of the initial enactment of the county subdivision regulation; and

(5) The division of land by any method of transfer solely among members of a linear family which shall include only direct lineal descendants (children, grandchildren, and great grandchildren) and direct lineal ascendants (father, mother, grandfather, and grandmother); and brothers, sisters, nieces, and nephews."

Sec. 2. Section 1.1 of this act applies only to Lincoln County.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1989.

S.B. 731 **CHAPTER 627**

AN ACT TO DEFINE MUSCULAR DYSTROPHY FOR TAX PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-149(a)(8i) reads as rewritten:

"(8i) In the case of an individual who has muscular dystrophy or whose dependent has muscular dystrophy, an additional exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to the tax return on which he claims the exemption a statement

from a physician or county health department certifying that the individual or dependent for whom the exemption is claimed has muscular dystrophy. As used in this subdivision, the term 'muscular dystrophy' includes the following 40 neuromuscular diseases: Duchenne Muscular Dystrophy, Becker Muscular Dystrophy, Emery-Dreifuss Muscular Dystrophy, Limb-Girdle Muscular Dystrophy, Juvenile Dystrophy of Erb, Facioscapulohumeral Muscular Dystrophy, Myotonic Dystrophy, Oculopharyngeal Muscular Dystrophy, Ocular Muscular Dystrophy, Distal Muscular Dystrophy, Congenital Muscular Dystrophy, Muscular Dystrophy of Late Onset, Amyotrophic Lateral Sclerosis, Infantile Progressive Spinal Muscular Atrophy, Intermediate Spinal Muscular Atrophy, Juvenile Spinal Muscular Atrophy, Adult Spinal Muscular Atrophy, Polymyositis, Dermatomyositis, Myositis Ossificans, Myasthenia Gravis, Eaton-Lambert Syndrome, Peroneal Muscular Atrophy, Friedreich's Ataxia, Dejerine-Sottas Disease, Myotonia Congenita, Paramyotonia Congenita, Phosphorylase Deficiency, Acid Maltase Deficiency, Phosphofructokinase Deficiency, Debrancher Enzyme Deficiency, Carnitine Deficiency, Carnitine Palmityltransferase Deficiency, Periodic Paralysis, Hyperthyroid Myopathy, Hypothyroid Myopathy, Central Core Disease, Nemaline Myopathy, Mitochondrial Disease, and Myotubular Myopathy."

Sec. 2. This act is effective for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 12th day of July, 1989.

S.B. 786 **CHAPTER 628**

AN ACT TO ALLOW THE DEPARTMENT OF REVENUE TO PROVIDE IDENTIFICATION INFORMATION FROM TAX RETURNS TO THE DEPARTMENT OF STATE TREASURER FOR ESCHEATS PURPOSES AND TO CLARIFY THE PURPOSE FOR WHICH THE EMPLOYMENT SECURITY COMMISSION MAY REQUEST IDENTIFICATION INFORMATION FROM THE DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-259 reads as rewritten:

"*§ 105-259. Secrecy required of officials; penalty for violation.*

With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii)

members and former members of the Property Tax Commission; (iv) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (v) the Commissioner of Insurance and all other officers or employees and former officers and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of said persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be determined, deduced or estimated, whether the same be set forth or disclosed in or by means of any report or return required to be filed or furnished under this Subchapter, or in or by means of any audit, assessment, application, correspondence, schedule or other document relating to such taxpayer, notwithstanding the provisions of Chapter 132 of the General Statutes or of any other law or laws relating to public records. It shall likewise be unlawful to reveal whether or not any taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or corporation not otherwise entitled to information relating to the amount of income, income tax or other taxes of a taxpayer, any list of names, addresses, social security numbers or other personal information concerning such taxpayer, whether or not such list discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that when an election is made by a husband and wife under G.S. 105-152(e) to file their separate returns on a single form, or in order to determine an exemption allowable under G.S. 105-149(a)(2), any information given to one spouse concerning the income or income tax of the other spouse reported or reportable on such single return or on separate returns shall not be a violation of the provisions of this section.

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of such reports or returns by the Governor, Attorney General, or their duly authorized representative; or the inspection by a legal representative of the State of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this Subchapter; nor shall the provisions of this section prohibit the Department of Revenue furnishing information to other governmental agencies of persons and firms properly licensed

under Schedule B, G.S. 105-33 to 105-113. The Department of Revenue may exchange information with the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to 105-113, with respect to parties liable for such taxes and as to parties who have paid such license taxes.

When any record of the Department of Revenue shall have been photographed, photocopied or microphotocopied pursuant to the authority contained in G.S. 8-45.3, the original of said record may thereafter be destroyed at any time upon the order of the Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-3 or any other law or laws relating to the preservation of public records. Any record which shall not have been so photographed, photocopied or microphotocopied shall be preserved for three years, and thereafter until the Secretary of Revenue shall order the same to be destroyed.

Any person, officer, agent, clerk, employee, local tax official or former officer, employee or local tax official violating the provisions of this section shall be guilty of a misdemeanor and fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000) and/or imprisoned, in the discretion of the court; and if such offending person be a public officer or employee, he shall be dismissed from such office or employment, and shall not hold any public office or employment in this State for a period of five years thereafter.

Notwithstanding the provisions of this section, the Secretary of Revenue may permit the Commissioner of Internal Revenue of the United States, or the revenue officer of any other state imposing any of the taxes imposed in this Subchapter, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish such officer or his authorized agent an abstract of the report or return of any taxpayer; or supply such officer with information concerning any item contained in any report or return, or disclosed by the report of any investigation of such report or return of any taxpayer. Such permission, however, shall be granted or such information furnished to such officer, or his duly authorized representatives, only if the statutes of the United States or of such other state grants substantially similar privilege to the Secretary of Revenue of this State or his duly authorized representative. ~~Notwithstanding contrary provisions of this section, the Secretary may also furnish to the Employment Security Commission account and identification numbers, and names and addresses, of taxpayers when said Commission requires such information for the purpose of administering Chapter 96 of the General Statutes.~~ Notwithstanding any other provision of law, the Secretary may also furnish names, addresses, and account and identification numbers of (a) taxpayers

who may be entitled to property held in the Escheat Fund to the Department of State Treasurer when that Department requests the information for the purpose of administering Chapter 116B of the General Statutes, and (b) taxpayers to the Employment Security Commission when that Commission requests the information for the purpose of administering Article 2 of Chapter 96 of the General Statutes. Neither this section nor any other law prevents the exchange of information between the Department of Revenue and the Department of Transportation's Division of Motor Vehicles when the information is needed by either to administer the laws with which they are charged. Notwithstanding any other provision of law, State officers and employees who perform computerized data processing functions pursuant to G.S. 143-341(9) for the Department of Revenue are authorized to receive and process for the Department of Revenue information in reports and returns and are subject to the criminal provisions of this section.

Notwithstanding the provisions of this section, the Secretary of Revenue may contract with any person, firm or corporation to receive and address, sort, bag, or deliver to the United States Postal Service any bulk mailing originated by the Department of Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure performance of the contract, the contractor shall furnish a bond in a form and amount acceptable to the Secretary."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1989.

S.B. 858 **CHAPTER 629**

AN ACT TO ALLOW ABC PERMITS TO BE ISSUED IN CERTAIN AREAS OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-101(16) reads as rewritten:

"(16) ~~'Unincorporated area'~~ 'Special ABC area' means an area in a county, either unincorporated or incorporated, with less than 100 permanent residents that:

(1) Borders on another state;

(2) Where ABC stores ~~and the sale of unfortified wines and malt beverages are permitted in all~~ are permitted in one or more cities in the county;

(3) Where the on-premises sale of unfortified wines and malt beverages by qualified persons and establishments, including persons and establishments

qualified under G.S. 18B-603(c) or G.S. 18B-603(d), is permitted countywide or in two or more cities in the county; and such ~~unincorporated~~ area

(a) Contains more than a 1000 acres and is made up of privately-owned land and land owned by an association or club having more than 200 members and created for municipal and recreational purposes;

(b) Which ~~as of the date of the enactment of G.S. 18B-600~~ for three or more years has levied assessments or dues and provided municipal ~~services.~~ services; and

(c) Is incorporated as a municipality or has within such area a private association or club that has been determined or is treated by the Internal Revenue Service to be exempt from tax on member source or exempt function income."

Sec. 2. G.S. 18B-603(f2) reads as rewritten:

"(f2) Permits for ~~Unincorporated~~ Special ABC Areas -- The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(3), G.S. 18B-1001(5), and G.S. 18B-1001(10) to qualified persons and ~~establishments~~ establishments, not open to the public, located within ~~an unincorporated~~ a Special ABC area as defined in ~~G.S. 18B-101 without approval at an election.~~ G.S. 18B-101, provided that: (i) if such area is a municipal corporation, the area shall conduct an election authorized by subdivision (a)(4) of G.S. 18B-600, which election may be held regardless of the number of registered voters located within the municipal corporation; or (ii) if such area is unincorporated but has within such area a private association or club, the board of such private association or club shall call and conduct a special meeting at which meeting a majority of private association members, club members, lot and home owners, votes and approves the sale of mixed beverages, and the board certifies the results of such meeting to the Alcoholic Beverage Control Commission. The mixed beverages ~~purchased~~ purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the same county as the ~~unincorporated~~ Special ABC area."

Sec. 3. This act shall not affect or impair the rights of permit holders located within unincorporated areas who have heretofore qualified for permits allowing the sale of mixed beverages.

Sec. 4. This act shall not include Columbus, Caswell, Person, Granville, Vance, Warren, Halifax, Robeson, Cleveland, Rutherford, Macon, Polk, Davidson, and Davie Counties.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1989.

H.B. 238 **CHAPTER 630**

AN ACT TO REQUIRE THAT REAL PROPERTY ACQUIRED BY THE STATE BY PURCHASE OR CONDEMNATION BE APPRAISED BY STATE-LICENSED OR STATE-CERTIFIED REAL ESTATE APPRAISERS AFTER JANUARY 1, 1991.

The General Assembly of North Carolina enacts:

Section 1. An appraisal of real estate or an interest therein, required under State law or rule to be made prior to the State or any of its agencies' acquisition of that property, shall be made by a State-licensed or State-certified real estate appraiser.

Sec. 2. This act shall become effective January 1, 1991.

In the General Assembly read three times and ratified this the 12th day of July, 1989.

H.B. 324 **CHAPTER 631**

AN ACT TO AUTHORIZE AUTOMOBILE LIABILITY INSURERS TO OFFER COVERAGE FOR DAMAGE TO RENTAL VEHICLES DRIVEN BY THEIR INSUREDS; TO PROHIBIT CERTAIN ADVERTISING AND SALES PRACTICES OF RENTAL CAR COMPANIES; AND TO CLARIFY THE LAW REGARDING SALES OF INSURANCE BY RENTAL CAR COMPANY EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Article 12B of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-124.34. Coverage for damage to rental vehicles authorized.*

Every member of the Bureau is authorized to offer and provide, as a supplemental extension of property damage liability coverage in nonfleet private passenger motor vehicle insurance policies, coverage for property damage to rented motor vehicles caused by persons insured under such policies."

Sec. 2. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 27.

"Rental Car Advertising and Sales Practices.

"§ 66-190. *Scope.*

This Article applies to all persons renting vehicles from locations within this State.

"§ 66-191. *Definitions.*

As used in this Article:

(1) 'Collision damage waiver' means any contract or contractual provision, whether separate from or a part of a rental agreement, whereby the rental car company agrees for a charge to waive any and all claims against the renter for any damages to the rented vehicle during the term of the rental agreement.

(2) 'Damage' means any damage or loss to the rented vehicle, including loss of use and any costs and expenses incident to the damage or loss.

(3) 'Person' includes an individual, aggregation of individuals, corporation, company, association, or partnership.

(4) 'Rental agreement' means any written agreement setting forth the terms and the conditions governing the use of a vehicle provided by the rental car company.

(5) 'Rental car company' means any person in the business of providing vehicles to the public.

(6) 'Renter' means any person obtaining the use of a vehicle from a rental car company under the terms of a rental agreement.

(7) 'Vehicle' means a motor vehicle of the private passenger type including passenger vans and minivans that are primarily intended for transport of persons.

"§ 66-192. *Rental car advertising.*

(a) A rental car company shall only advertise and charge a rental rate that includes the entire amount, except taxes and a mileage charge if any, that a renter must pay to hire or lease a vehicle for the period of time to which the rental rate applies.

(b) If a rental car company states a rental rate in a print advertisement or an in-person or computer-transmitted quotation, the rental car company shall clearly disclose or cause to be disclosed in that advertisement or quotation the terms of any mileage conditions relating to the advertised or quoted rental rate, including, but not limited to: To the extent applicable, the amount of mileage and fuel charges; the number of miles for which no charge will be imposed; and a description of the geographic driving limitations, if any, within the United States and Canada.

(c) A rental car company shall also include in all advertising the daily rate it charges for collision damage waivers; shall state in such advertising that collision damage waivers are not required; and shall state that prospective renters should examine or inquire about their automobile insurance policies to see whether such policies will cover damage to rental vehicles.

(d) An advertised rental rate does not have to include airport access charges that may be avoided, as long as the advertisement clearly and conspicuously discloses, immediately adjacent to the advertised rate, the range of airport access charges that exists in the area to which the advertised rental rate applies and clearly and conspicuously discloses the method of avoiding the airport access charge.

"§ 66-193. *Prohibited charges.*

(a) No rental car company may charge, in addition to the rental rate, taxes, and mileage charge, if any, any fee that must be paid by the renter as a condition of hiring or leasing a vehicle, such as, but not limited to, required fuel charges or any fee for transporting the renter to the location where the rented vehicle will be delivered to that person.

(b) If a rental car company delivers a vehicle to a person at a location other than the location where the rental car company normally carries on its business, the rental car company shall not charge that person any amount for the rental for the period before the delivery of the vehicle. If a rental car company picks up a rented vehicle from a person at a location other than the location where the rental car company normally carries on its business the rental car company shall not charge to the renter any amount for the rental for the period after the rented vehicle is available for pickup in accordance with the notification given to the rental car company to pick up the rented vehicle.

"§ 66-194. *Permitted charges.*

(a) In addition to the rental rate, taxes, and mileage charge, if any, a rental car company may charge a renter for an item or service provided in connection with a particular rental transaction if the renter can avoid incurring that charge by choosing not to obtain or utilize the optional item or service. Items and services for which a rental car company may impose an additional charge include, but are not limited to: Optional insurance and accessories requested by the renter unless otherwise prohibited by law; service charges incident to a person's optional return of the vehicle to a location other than the location where the vehicle was hired or leased; airport access charges that may be avoided by the renter, provided the requirements of G.S. 66-192(d) are met; and charges for refueling the vehicle at the conclusion of the

rental transaction in the event the rented vehicle is not returned with as much fuel as was in its fuel tank at the beginning of the rental.

(b) A rental car company may also impose an additional charge based on reasonable driving experience criteria established by the rental car company.

"§ 66-195. *Agent licenses required.*

No employee or other representative of a rental car company shall solicit or sell any kind of insurance in connection with a rental agreement unless he is duly licensed under Article 45 of Chapter 58 of the General Statutes.

"§ 66-196. *Effects of violations.*

Any violation of the provisions of this Article constitutes an unfair trade practice under G.S. 75-1.1."

Sec. 3. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 12th day of July, 1989.

H.B. 874 **CHAPTER 632**

AN ACT TO INCORPORATE THE TOWN OF KINGSTOWN.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Kingstown is enacted to read:

"CHARTER OF THE TOWN OF KINGSTOWN.

"Chapter I.

"Incorporation and Corporate Powers.

"Sec. 1-1. *Incorporation and corporate powers.* The inhabitants of the Town of Kingstown, in the County of Cleveland, State of North Carolina, are a body corporate and politic under the name 'Town of Kingstown'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the General Law of North Carolina.

"Chapter II.

"Corporate Boundaries.

"Sec. 2-1. *Town boundaries.* Until modified in accordance with law, the boundaries of the Town of Kingstown are as follows:

BEGINNING at an iron pin located in the point of intersection of centerline of the intersection of KINGSTON ROAD (S.R. 1341) and ZION CHURCH ROAD (S.R. 1337) and proceeding thence N 26-30-15 W 128.44 feet to an iron pin located in the centerline of KINGSTON ROAD (S.R. 1341); thence N87-58 W 2905.02 feet to an iron pin; thence along the center of and following the course of BRUSHY CREEK, N 24-05 W 695 feet, further N 52-22 W 507.37

feet, further N 86-31-30 W 207.45 feet, further N 05-45-15 W 295.16 feet, further N 07-58-E 255.50 feet, further N 08-11 W 224.84, further N 00-14-40 W 547.43 feet, further N 05-19-30 W 155.64 feet, N 22-25-00 W 161.02 feet, N 07-09-15 W 150.35 feet, N 34-48-25 W 108.50 feet, N 52-50-00 W 229.24 feet, N 01-06-30 W 119.63 feet, N 30-23-10 W 132.59 feet, N 10-30-00 W 128.72 feet, N 51-29-00 W 169.65 feet, thence in a Southerly direction through the Kingston Community leaving out the lands of Virginia M. Allen (Deed Book 15 V, at Page 109), Phillip & Albert Greene (Deed Book 7P, at Page 253), Albert Greene & Sarah Greene (Deed Book 185, at Page 841), J. M. Mauney (Deed Book 9U, at Page 628), and Mt. Calvary Baptist Church (Deed Book 10D, at Page 413) to an iron pin located in Southern border of the Kingston Community; thence S 50-34-05 E 257.00 feet; thence; further S 51-44-15 W 22 feet, S 16-50-50 E 63.72 feet, S 30-21-18 E 141.40 feet, S 18-18-10 E 129.12 feet, S 15-10-10 E 113.51 feet, S 09-49-05 E 113.00 feet, S 00-01-35 W 151.00 feet, further S 20-42-50 E 71.51 feet; thence S 71-00-00 E 300.00 feet to an iron pin; thence N 82-24-05 E 585.02 feet to an iron pin; thence S 23-00-00 E 220.00 feet to an iron pin, thence N 80-15-00 E 440 feet to an iron pin; S 09-43-30 E 200.00 feet to an iron pin; S 88-16-30 W 265.58 feet to an iron pin; thence S 41-01-03 E 70.35 feet to an iron pin; N 80-39-40 E 415.09 feet to an iron pin; S 09-29-30 E 405.50 feet to an iron pin; thence S 50-33-35 W 217.59 feet to an iron pin located in the centerline of WILLIAMSTON ROAD; thence S 54-46-50 W 465.13 feet to an iron pin; thence N 17-11-00 W 173.00 feet to an iron pin; thence S 80-15-00 W 260.52 to an iron pin; S 17-11-00 E 120 feet to an iron pin; thence S 24-55-15 E 722.67 feet to an iron pin; thence S 24-55-15 E 722.67 feet to an iron pin; thence S 06-12-00 E 196.60 feet to an iron pin; thence 2-23-31 E 957.00 feet to an iron pin; thence S 81-59-45 W 752.28 feet to an iron pin; thence S 26-08-42 E 690.20 feet to an iron pin; S 60-29-20 E 264.00 feet to an iron pin; thence N 88-32-36 E 651.75 feet to an iron pin; thence S 06-55-50 W 503.15 feet to an iron pin; thence S 15-57-40 W 165.87 feet to iron pin; thence across a branch S 84-08-40 E 391.58 feet to an iron pin; thence S 20-35-35 E 540.91 feet to an iron pin; thence S 17-41-20 E 940.04 feet to an iron pin; thence in a Southerly direction through the Kingston Community to the point and place of BEGINNING.

"Chapter III.

"Governing Body.

"Sec. 3-1. *Structure of governing body; number of members.*

The governing body of the Town of Kingstown is the Town Council, which has five members, and the Mayor.

"Sec. 3-2. *Manner of electing Council.*

(a) The qualified voters of the entire Town nominate and elect the members of the Council.

(b) The governing body of the Town may, by ordinance duly adopted, provide that the governing body of the Town shall consist of six members elected by wards which shall as nearly as possible be numerically equal in population and have fixed, known, and visible boundaries.

"Sec. 3-3. *Term of office of Council members.*

In 1989, five members of the Council shall be elected. The three receiving the highest numbers of votes are elected to four-year terms, the two receiving the next highest numbers of votes are elected to two-year terms. In 1991 and each four years thereafter, two members of the Council shall be elected for four-year terms. In 1993 and each four years thereafter, three members of the Council shall be elected for four-year terms.

"Sec. 3-4. *Election of Mayor.* A Mayor shall be elected in 1989 and every four years thereafter for a four-year term.

"Chapter IV.

"Elections.

"Sec. 4-1. *Conduct of Town elections.*

(a) Elections shall be conducted in accordance with the general election laws pertaining to municipal elections.

(b) Town officers shall be elected on a nonpartisan basis and the results determined by a majority of votes cast, with a runoff election if necessary, as provided by G.S. 163-293.

"Chapter V.

"Administration.

"Sec. 5-1. *Mayor-council form of government.*

(a) The Town shall adopt the mayor-council form of government and shall operate under the mayor-council form of government in accordance with Part 3 of Article 7 of Chapter 160A of the General Statutes and any charter provisions not in conflict therewith.

(b) The Town Council may appoint a treasurer, a tax collector, an accountant, a town attorney, a chief of police, a fire chief, and such other officers and employees as may be necessary, none of whom need be a resident of the Town at the time of appointment. Such employees or officers shall serve at the pleasure of the Town Council. The Town Council shall fix all salaries, prescribe bonds and require such oaths as they may deem necessary.

(c) The Town Council shall choose a town clerk. The town clerk shall keep the records of the Town Council and perform such other duties as may be required by law or the Town Council.

(d) The Town Council may designate the holder of any office listed under this section to hold ex officio any of the other offices listed under this section."

Sec. 2. (a) Until the organizational meeting after the 1989 regular Town election, the following persons shall be members of the Town Council:

Vice President - Ronald Evans
Secretary - Mary Evans
Assistant Secretary - Chinnetta Brooks
Treasurer - Charlie Mintz
Assistant Treasurer - Walter Benton

(b) Until the organizational meeting after the 1989 regular Town election, Clarence Withrow shall be Mayor.

Sec. 3. From and after July 1, 1989, the citizens and property in the Town of Kingstown shall be subject to municipal taxes levied for the year beginning July 1, 1989, and for that purpose the Town shall obtain from Cleveland County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1989, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1989-90 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. The Town may not levy an ad valorem tax for fiscal year 1988-89.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1989.

H.B. 659 **CHAPTER 633**

AN ACT TO ALLOW ESTABLISHMENT OF SATELLITE REGISTER OF DEEDS OFFICES AND TO AUTHORIZE THE RECORDING OF DOCUMENTS AT THOSE OFFICES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 161 of the General Statutes is amended by adding a new section to read:

"*§ 161-14.3. Satellite offices.*

(a) The board of county commissioners may by resolution establish one or more satellite offices of the register of deeds at locations in the county other than the seat of government. Before a satellite office is established, the register of deeds shall certify to the board of county commissioners that the recording and indexing procedures to be used

in the satellite office comply in all respects with the law and have been approved by the North Carolina Department of Natural Resources and Community Development, Land Records Management Program, Land Resources Division. The register of deeds also will certify that all instruments presented for registration and other documents presented for recording will be registered or recorded in the order in which they are presented, regardless of the location where they are presented.

(b) Any instrument registered or document recorded at a satellite office of the register of deeds on or after the effective date of a resolution adopted pursuant to subsection (a) of this section shall be considered for all purposes a legally registered instrument or recorded document, and such instruments and documents shall be considered the same as though they had been registered or recorded in the register of deeds office at the seat of government."

Sec. 2. This act shall apply to Guilford and Moore Counties only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1989.

H.B. 696 **CHAPTER 634**

AN ACT TO PROVIDE A COMMODITIES ACT.

The General Assembly of North Carolina enacts:

Section 1. A new Chapter is added to the General Statutes to read:

"Chapter 78D.
"Commodities Act.
"Article 1.
"Scope.

"§ *78D-1. Definitions.*

(1) 'Administrator' means the Secretary of State.

(2) 'Board of Trade' means any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange or other form of marketplace.

(3) 'CFTC Rule' means any rule, regulation or order of the Commodity Futures Trading Commission in effect on the effective date of this Chapter and all subsequent amendments, additions or other revisions thereto, unless the Administrator, within 10 days following the effective date of any such amendment, addition or revision,

disallows the application thereof to this Part or to any provision thereof by rule, regulation or order.

(4) 'Commodity' means, except as otherwise specified by the Administrator by rule, regulation or order, any agricultural, grain or livestock product or by-product, any metal or mineral (including a precious metal set forth in subdivision (13) of this section), any gem or gemstone (whether characterized as precious, semi-precious or otherwise), any fuel (whether liquid, gaseous or otherwise), any foreign currency, and all other goods, articles, products or items of any kind; provided that the term commodity shall not include (i) a numismatic coin whose fair market value is at least fifteen percent (15%) higher than the value of the metal it contains, (ii) real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property or (iii) any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner thereof.

(5) 'Commodity Contract' means any account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(6) 'Commodity Exchange Act' means the act of Congress known as the Commodity Exchange Act, as amended to the effective date of this Chapter, codified at 7 U.S.C. §1, *et seq.* and all subsequent amendments, additions or other revisions thereto, unless the Administrator, within 10 days following the effective date of any such amendment,

addition or revision, disallows the application thereof to this Part or to any provision thereof by rule, regulation or order.

(7) 'Commodity Futures Trading Commission' means the independent regulatory agency established by Congress to administer the Commodity Exchange Act.

(8) 'Commodity Merchant' means any of the following as defined or described in the Commodity Exchange Act or by CFTC Rule:

a. Futures commission merchant;
b. Commodity pool operator;
c. Commodity trading advisor;
d. Introducing broker;
e. Leverage transaction merchant;
f. An associated person of any of the foregoing;
g. Floor broker; and
h. Any other person (other than a futures association) required to register with the Commodity Futures Trading Commission.

(9) 'Commodity Option' means any account, agreement or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities and/or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but shall not include an option traded on a national securities exchange registered with the United States Securities and Exchange Commission.

(10) 'Financial Institution' means a bank, savings institution or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

(11) 'Offer' includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

(12) 'Person' means an individual, a corporation, a partnership, association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government, but shall not include a contract market designated by the Commodity Futures Trading Commission or any clearinghouse thereof or a national securities exchange registered with the Securities and Exchange Commission (or any employee, officer or

director of such contract market, clearinghouse or exchange acting solely in that capacity).

(13) 'Precious Metal' means the following in either coin, bullion or other form:

a. Silver;
b. Gold;
c. Platinum;
d. Palladium;
e. Copper; and
f. Such other items as the Administrator may specify by rule.

(14) 'Sale' or 'sell' includes every sale, contract of sale, contract to sell, or disposition, for value.

"§ 78D-2. *Unlawful commodity transactions.*

Except as otherwise provided in G.S. 78D-3 or G.S. 78D-4, no person shall sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

"§ 78D-3. *Exempt person transactions.*

The prohibitions in G.S. 78D-2 shall not apply to any transaction offered by and in which any of the following persons (or any employee, officer or director thereof acting solely in that capacity) is the purchaser or seller:

(1) A person registered with the Commodity Futures Trading Commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration;

(2) A person registered with the Securities and Exchange Commission as a broker-dealer whose activities require such registration;

(3) A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subdivisions (1) or (2) of this section;

(4) A person who is a member of a contract market designated by the Commodity Futures Trading Commission (or any clearinghouse thereof);

(5) A financial institution; or

(6) A person registered under the laws of this State as a securities broker-dealer whose activities require such registration.

The exemption provided by this section shall not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC Rule.

"§ 78D-4. *Exempt transactions.*

(a) The prohibitions in G.S. 78D-2 shall not apply to the following:

(1) An account, agreement or transaction within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted under the Commodity Exchange Act;

(2) A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment, provided that, for purposes of this paragraph, physical delivery shall be deemed to have occurred if, within such twenty-eight-day period, such quantity of precious metals purchased by such payment is delivered (whether in specifically segregated or fungible bulk form) into the possession of a depository (other than the seller) which is either (i) a financial institution, (ii) a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission, (iii) a storage facility licensed or regulated by the United States or any agency thereof, or (iv) a depository designated by the Administrator, and such depository (or other person which itself qualifies as a depository as aforesaid) or a qualified seller issues and the purchaser receives, a certificate, document of title, confirmation or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(3) A commodity contract solely between persons engaged in producing, processing, using commercially or handling as merchants, each commodity subject thereto, or any by-product thereof; or

(4) A commodity contract under which the offeree or the purchaser is a person referred to in G.S. 78D-3 of this Chapter, an insurance company, an investment company as defined in the Investment Company Act of 1940, or an employee pension and profit sharing or benefit plan (other

than a self-employed individual retirement plan, or individual retirement account).

(b) For the purposes of G.S. 78D-4(a)(2), a qualified seller is a person who:

(1) Is a seller of precious metals and has a tangible net worth of at least $5,000,000 (or has an affiliate who has unconditionally guaranteed the obligations and liabilities of the seller and the affiliate has a tangible net worth of at least $5,000,000);

(2) Has stored precious metals with one or more depositories on behalf of customers for at least the previous three years;

(3) Prior to any offer, and annually thereafter, files with the Administrator a sworn notice of intent to act as a qualified seller under G.S. 78D-4(a)(2), containing:

a. The seller's name and address, names of its directors, officers, controlling shareholders, partners, principals, and other controlling persons;

b. The address of its principal place of business, state and date of incorporation or organization, and the name and address of seller's registered agent in this State;

c. A statement that the seller (or a person affiliated with the seller who has guaranteed the obligations and liabilities of the seller) has a tangible net worth of at least $5,000,000;

d. Depository information including:

1. The name and address of the depository or depositories that the seller intends to use;

2. The name and address of each and every depository where the seller has stored precious metals on behalf of customers for the previous three years; and

3. Independent verification from each and every depository named in (3)d.2. of this section that the seller has in fact stored precious metals on behalf of the seller's customers for the previous three years and a statement of total deposits made during this period.

e. Financial statements for the seller (or the person affiliated with the seller who has guaranteed the obligations and liabilities of the seller) for the past three years, audited by an independent certified public accountant, together with the accountant's report;

f. A statement describing the details of all civil, criminal, or administrative proceedings currently pending or

adversely resolved against the seller or its directors, officers, controlling shareholders, partners, principals, or other controlling persons during the past 10 years including: (i) civil litigation and administrative proceedings involving securities or commodities violations, or fraud, (ii) criminal proceedings, (iii) denials, suspensions or revocations of securities or commodities licenses or registrations, and (iv) suspensions or expulsions from membership in, or associations with, self-regulatory organizations registered under the Securities Exchange Act of 1934, or the Commodity Exchange Act; or (v) a statement that there were no such proceedings.

(4) Notifies the Administrator within 15 days of any material changes in the information provided in the notice of intent; and

(5) Annually furnishes to each purchaser for whom the seller is then storing precious metals, and to the Administrator, a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program that includes a reconciliation of the total amount of depository confirmations issued by all depositories where the seller has stored precious metals to the total amount of all confirmations issued to customers by the seller.

(c) The Administrator may, upon request by the seller, waive any of the exemption requirements in G.S. 78D-4(b), conditionally or unconditionally.

(d) The Administrator may, by order, deny, suspend, revoke or place limitations on the authority to engage in business as a qualified seller under G.S. 78D-4(a)(2) if the Administrator finds that the order is in the public interest and that the person, the person's officers, directors, partners, agents, servants or employees, any person occupying a similar status or performing similar functions, any person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates or subsidiaries:

(1) Has filed a notice of intention under G.S. 78D-4(c) with the Administrator or the designee of the Administrator which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Has, within the last 10 years, pled guilty or *nolo contendere* to, or been convicted of any crime indicating a lack of fitness to engage in the investment commodity business;

(3) Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice which injunction indicates a lack of fitness to engage in the investment commodities business;

(4) Is the subject of an order of the Administrator denying, suspending, or revoking the person's license as a securities broker-dealer, sales representative, or investment adviser;

(5) Is the subject of any of the following orders which are currently effective and which were issued within the last five years:

a. An order by the securities agency or Administrator of another state, Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a futures commission merchant, leverage transaction merchant, introducing broker, commodity trading adviser, commodity pool operator, securities broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;

b. Suspension or expulsion from membership in, or association with, a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act;

c. A United States Postal Service fraud order;

d. A cease and desist order entered after notice and opportunity of hearing by the Administrator or the securities agency or Administrator of any other state, Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission;

e. An order entered by the Commodity Futures Trading Commission denying, suspending or revoking registration under the Commodity Exchange Act.

(6) Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business; or

(7) Has failed reasonably to supervise sales representatives or employees.

(e) If the public interest or the protection of investors so requires, the Administrator may, by order, summarily deny or suspend the

exemption for a qualified seller. Upon the entry of the order, the Administrator shall promptly notify the person claiming said status that an order has been entered and the reasons therefor and that within 30 days after the receipt of a written request the matter will be set for hearing. The provisions of G.S. 78D-30 shall apply with respect to all subsequent proceedings.

(f) If the Administrator finds that any applicant or qualified seller is no longer in existence or has ceased to do business or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Administrator may, by order, deny or revoke the exemption for a qualified seller.

(g) The Administrator may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by the provisions of this Chapter which are not within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted by the Commodity Exchange Act, exempting any person or transaction from any provision of this Chapter conditionally or unconditionally and otherwise implementing the provisions of this Chapter for the protection of purchasers and sellers of commodities.

"§ 78D-5. *Unlawful commodity activities.*

(a) No person shall engage in a trade or business or otherwise act as a commodity merchant unless such person (i) is registered or temporarily licensed with the Commodity Futures Trading Commission for each activity constituting such person as a commodity merchant and such registration or temporary license shall not have expired, nor been suspended nor revoked; or (ii) is exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.

(b) No board of trade shall trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the Commodity Futures Trading Commission unless such board of trade has been so designated for such commodity contract or commodity option and such designation shall not have been vacated, nor suspended nor revoked.

"§ 78D-6. *Fraudulent conduct.*

No person, shall directly or indirectly:

(1) Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme or artifice to defraud any other person;

(2) Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements

made, in the light of the circumstances under which they were made, not misleading;

(3) Engage in any transaction, act, practice or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person; or

(4) Misappropriate or convert the funds, security or property of any other person;

in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to the provisions of G.S. 78D-2, 78D-3, 78D-4(a)(2) or G.S. 78D-4(a)(4) of this Chapter.

"§ 78D-7. *Liability of principals, controlling persons and others.*

(a) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(b) Every person who directly or indirectly controls another person liable under any provision of this Chapter, every partner, officer, or director of such other person, every person occupying a similar status or performing similar functions, every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

"§ 78D-8. *Securities and laws unaffected.*

Nothing in this Chapter shall impair, derogate or otherwise affect the authority or powers of the Administrator under Chapters 78A or 78C of the General Statutes or the application of any provision thereof to any person or transaction subject thereto.

"§ 78D-9. *Purpose.*

This Chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' laws and the administration and enforcement thereof. This Chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate the provisions of this Chapter.

"Article 2.

"Administration and Enforcement.

"*§ 78D-21. Investigations.*

(a) The Administrator may make investigations, within or without this State, as it finds necessary or appropriate to:

(1) Determine whether any person has violated, or is about to violate, any provision of this Chapter or any rule or order of the Administrator; or

(2) Aid in enforcement of this Chapter.

(b) The Administrator may publish information concerning any violation of this Chapter or any rule or order of the Administrator.

(c) For purposes of any investigation or proceeding under this Chapter, the Administrator or any officer or employee designated by rule or order, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Administrator finds to be relevant or material to the inquiry.

(d) (1) If a person does not give testimony or produce the documents required by the Administrator or a designated employee pursuant to an administrative subpoena, the Administrator or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

(2) The request for order of compliance may be addressed to either:

a. The Superior Court of Wake County where service may be obtained on the person refusing to testify or produce, if the person is within this State; or

b. The appropriate court of the State having jurisdiction over the person refusing to testify or produce, if the person is outside this State.

(e) The Administrator in his discretion may appoint commodities law enforcement agents and other enforcement personnel.

(1) Subject Matter Jurisdiction. -- The responsibility of an agent shall be enforcement of this Chapter.

(2) Territorial Jurisdiction. -- A commodities law enforcement agent is a State officer with jurisdiction throughout the State.

(3) Service of Orders of the Administrator. -- Commodities law enforcement agents may serve and execute notices, orders, or demands issued by the Administrator for the surrender of registrations or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, commodities law enforcement agents

shall have all the power and authority possessed by law enforcement officers when executing an arrest warrant.

"§ 78D-22. *Enforcement of Chapter.*

(a) If the Administrator believes, whether or not based upon an investigation conducted under G.S. 78D-21 that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Chapter or any rule or order hereunder, the Administrator may:

(1) Issue a cease and desist order;

(2) Issue an order imposing a civil penalty in amount which may not exceed twenty-five thousand dollars ($25,000) for any single violation or five hundred thousand dollars ($500,000) for multiple violations in a single proceeding or a series of related proceedings;

(3) Issue an order requiring reimbursement of the costs of investigation; or

(4) Initiate any of the actions specified in subsection (b) of this section.

Any civil penalty or reimbursement of costs imposed by this subsection shall be paid to the General Fund.

(b) The Administrator may institute any of the following actions in the appropriate courts of this State, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

(1) A declaratory judgment;

(2) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this Chapter or any rule or order of the Administrator;

(3) An action for disgorgement; or

(4) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

"§ 78D-23. *Power of court to grant relief.*

(a) (1) Upon a proper showing by the Administrator that a person has violated, or is about to violate, any provision of this Chapter or any rule or order of the Administrator, any court of competent jurisdiction may grant appropriate legal or equitable remedies.

(2) Upon showing of violation of this Chapter or a rule or order of the Administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

a. Imposition of a civil penalty in amount which may not exceed twenty-five thousand dollars ($25,000) for any single violation or five hundred thousand dollars ($500,000) for multiple violations in a single proceeding or a series of related proceedings;
b. Disgorgement;
c. Declaratory judgment;
d. Restitution to investors wishing restitution; and
e. Appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) Appropriate remedies when the defendant is shown only about to violate this Chapter or a rule or order of the Administrator shall be limited to:
a. A temporary restraining order;
b. A temporary or permanent injunction;
c. A writ of prohibition or mandamus; or
d. An order appointing a receiver or conservator for the defendant or the defendant's assets.

(b) The court shall not require the Administrator to post a bond in any official action under this Chapter.

(c) (1) Upon a proper showing by the administrator or securities or commodity agency of another state that a person (other than a government or governmental agency or instrumentality) has violated, or is about to violate, any provision of the commodity code of that state or any rule or order of the administrator or securities or commodity agency of that state, the Superior Court of Wake County may grant appropriate legal and equitable remedies.

(2) Upon showing of a violation of the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant the following special remedies:
a. Disgorgement; and
b. Appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this State.

(3) Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a rule or order of the administrator or

securities or commodity agency of the foreign state shall be limited to:

a. A temporary restraining order;
b. A temporary or permanent injunction;
c. A writ of prohibition or mandamus; or
d. An order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this State.

"§ *78D-24. Criminal penalties.*

(a) Any person who willfully violates any provision of this Chapter shall, upon conviction, be punished as a Class I felon.

(b) Any person convicted of violating a rule or order under this Chapter may be fined, but may not be imprisoned, if the person proves he had no knowledge of the rule or order.

(c) In lieu of a fine otherwise authorized by law, a person who has been convicted of or who has pleaded guilty or no contest to having engaged in conduct in violation of the provisions of this Chapter may be sentenced to pay a fine that does not exceed the greater of three times the gross value gained or three times the gross loss caused by such conduct, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(d) The Administrator may refer such evidence as is available concerning violations of this Chapter or any rule or order of the Administrator to the Attorney General or the proper district attorney, who may, with or without such a reference from the Administrator, institute the appropriate criminal proceedings under this Chapter. Upon receipt of such reference, the Attorney General or the district attorney may request that a duly employed attorney of the Administrator prosecute or assist in the prosecution of such violation or violations on behalf of the State. Upon approval of the Administrator, such employee shall be appointed a special prosecutor for the Attorney General or the district attorney to serve without compensation from the Attorney General or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for Assistant Attorneys General or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the Attorney General or the district attorney.

(e) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law.

"§ *78D-25. Administration of Chapter.*

(a) This Chapter shall be administered by the Secretary of State. The Secretary of State as Administrator may delegate all or part of the authority under this Chapter to the Deputy Securities Administrator

including, but not limited to, the authority to conduct hearings, make, execute and issue final agency orders and decisions. The Secretary of State may appoint such clerks and other assistants as may from time to time be needed.

(b) Neither the Administrator nor any employees of the Administrator shall use any information which is filed with or obtained by the Administrator which is not public information for personal gain or benefit, nor shall the Administrator nor any employees of the Administrator conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.

(c) (1) Except as provided in subdivision (2) of this subsection, all information collected, assembled or maintained by the Administrator is public information and is available for the examination of the public as provided by Chapter 132 of the General Statutes.

(2) The following are exceptions to subdivision (1) which are deemed to be confidential:

a. Information obtained in private investigations pursuant to G.S. 78D-21 of this Chapter;

b. Information made confidential by the provisions of Chapter 132 of the General Statutes;

c. Information obtained from federal agencies which may not be disclosed under federal law.

(3) The Administrator in his discretion may disclose any information made confidential under subsection (2)a. to persons identified in G.S. 78D-26(a).

(4) No provision of this Chapter either creates or derogates any privilege which exists at common law, by statute or otherwise when any documentary or other evidence is sought under subpoena directed to the Administrator or any employee of the Administrator.

"§ *78D-26. Cooperation with other agencies.*

(a) To encourage uniform application and interpretation of this Chapter and securities regulation and enforcement in general, the Administrator and the employees of the Administrator may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this Chapter, the Commodity Futures Trading Commission, the Securities and Exchange Commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any

national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

(b) The cooperation authorized by subsection (a) shall include, but need not be limited to, the following:

(1) Making joint examinations or investigations;

(2) Holding joint administrative hearings;

(3) Filing and prosecuting joint litigation;

(4) Sharing and exchanging personnel;

(5) Sharing and exchanging information and documents;

(6) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and

(7) Issuing and enforcing subpoenas at the request of the agency administering this Chapter in another jurisdiction, the securities agency of another jurisdiction, the Commodity Futures Trading Commission or the Securities and Exchange Commission if the information sought would also be subject to lawful subpoena for conduct occurring in this State.

"§ 78D-27. *General authority to adopt rules, forms, and orders.*

(a) In addition to specific authority granted elsewhere in this Chapter, the Administrator may make, amend, and rescind rules, forms, and orders as are necessary to carry out the provisions of this Chapter. Such rules or forms shall include, but need not be limited to, the following:

(1) Rules defining any terms, whether or not used in this Chapter, insofar as the definitions are not inconsistent with the provisions of this Chapter. For the purpose of rules or forms, the Administrator may classify commodities and commodity contracts, persons, and matters within the Administrator's jurisdiction.

(b) Unless specifically provided in this Chapter, no rule, form, or order may be adopted, amended or rescinded unless the Administrator finds that the action is:

(1) Necessary or appropriate in the public interest or for the protection of investors; and

(2) Consistent with the purposes fairly intended by the policy and provisions of this Chapter.

(c) All rules and forms of the Administrator shall be published.

(d) No provision of this Chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order, or form adopted by the Administrator, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason.

"§ 78D-28. *Consent to service of process.*

When a person, including a nonresident of this State, engages in conduct prohibited or made actionable by the Chapter or any rule or order of the Administrator, the engaging in the conduct shall constitute the appointment of the Administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct and which is brought under the Chapter or any rule or order of the Administrator with the same force and validity as if served personally.

"§ 78D-29. *Scope of the Chapter.*

(a) G.S. 78D-2, 78D-5 and 78D-6 apply to persons who sell or offer to sell when:

(1) An offer to sell is made in this State, or

(2) An offer to buy is made and accepted in this State.

(b) G.S. 78D-2, 78D-5 and 78D-6 apply to persons who buy or offer to buy when:

(1) An offer to buy is made in this State, or

(2) An offer to sell is made and accepted in this State.

(c) For the purpose of this section, an offer to sell or to buy is made in this State, whether or not either party is then present in this State, when the offer:

(1) Originates from this State, or

(2) Is directed by the offeror to this State and received at the place to which it is directed (or at any post office in this State in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this State when acceptance:

(1) Is communicated to the offeror in this State, and

(2) Has not previously been communicated to the offeror, orally or in writing, outside this State; and acceptance is communicated to the offeror in this State, whether or not either party is then present in this State, when the offeree directs it to the offeror in this State, reasonably believing the offeror to be in this State and it is received at the place to which it is directed (or at any post office in this State in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this State when:

(1) The publisher circulates or there is circulated on his behalf in this State any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this State, or which is published in this State but has had more than two-thirds of its circulation outside this State during the past 12 months, or

(2) A radio or television program originating outside this State is received in this State.

"§ 78D-30. *Procedure for entry of an order.*

(a) The Administrator shall commence an administrative proceeding under this Chapter, by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.

(b) Upon entry of a notice of intent or summary order, the Administrator shall promptly notify all interested parties that the notice or summary order has been entered and the reasons therefor. If the proceeding is pursuant to a notice of intent, the Administrator shall inform all interested parties of the dates, time, and place set for the hearing on the notice. If the proceeding is pursuant to a summary order, the Administrator shall inform all interested parties that they have 30 business days from the entry of the order to file a written request for a hearing on the matter with the Administrator and that the hearing will be scheduled to commence with 30 business days after the receipt of the written request.

(c) If the proceeding is pursuant to a summary order, the Administrator, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the Administrator's own motion.

(d) If no hearing is requested and none is ordered by the Administrator, the summary order will automatically become a final order after 30 business days.

(e) If a hearing is requested or ordered, the Administrator, after notice of, and opportunity for, hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(f) No final order or order after hearing may be returned without:

(1) Appropriate notice to all interested persons;

(2) Opportunity for hearing by all interested persons; and

(3) Entry of written findings of fact and conclusions of law.

Every hearing in an administrative proceeding under this Chapter shall be public unless the Administrator grants a request joined in by all the respondents that the hearing be conducted privately.

"§ 78D-31. *Judicial review of orders.*

(a) Any person aggrieved by a final order of the Administrator may obtain a review of the order in the Superior Court of Wake County by filing in court, within 30 days after a written copy of the decision is served upon the person by personal service or by registered or certified mail, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith

served upon the Administrator, and thereupon the Administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the Administrator as to the facts, if supported by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the Administrator, the court may order the additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The Administrator may modify his findings and order by reason of the additional evidence and shall file in court the additional evidence together with any modified or new findings or order. The judgment of the court is final, subject to review by the Court of Appeals.

(b) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the Administrator's order.

"*§ 78D-32. Pleading exemptions.*

It shall not be necessary to negative any of the exemptions of this Chapter in any complaint, information or indictment, or any writ or proceeding brought under this chapter; and the burden of proof of any such exemption shall be upon the party claiming the same.

"*§ 78D-33. Affirmative Defense.*

It shall be a defense in any complaint, information, indictment, any writ or proceeding brought under this Chapter alleging a violation of G.S. 78D-2 based solely on the failure in an individual case to make physical delivery within the applicable time period under G.S. 78D-1(5) or G.S. 78D-4(a)(2) if the party asserting the defense sustains the burden of proof that:

(1) Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates, subsidiaries or successors; and

(2) Physical delivery was completed within a reasonable time under the applicable circumstances."

Sec. 2. This act shall become effective October 1, 1989, but rules under it may be adopted at any time after ratification but may not become effective before October 1, 1989.

In the General Assembly read three times and ratified this the 13th day of July, 1989.

H.B. 1053 **CHAPTER 635**

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE ELECTION LAWS.

The General Assembly of North Carolina enacts:

-----CORRECTING OVERLOOKED STATUTES IN ALLOWING AN ALTERNATIVE OATH.

Section 1. Effective upon the ratification of this act, G.S. 163-79 reads as rewritten:

"§ *163-79. Alternate oaths by voters and registrants.*

In the event any person taking any of the oaths in G.S. 163-19, G.S. 163-30, G.S. 163-41(a), G.S. 163-41(b), G.S. 163-43, G.S. 163-72, G.S. 163-74(a), G.S. 163-74(b), G.S. 163-74(c), and G.S. 163-78(b) objects to the phrase 'so help me, God' appearing at the end of said oaths, the words 'I do so affirm' may be substituted therefor."

-----CLARIFYING THAT NO ONE MAY VOTE IN A PARTY'S PRIMARY WHO HAS NOT BECOME REGISTERED IN THAT PARTY BY THE TWENTY-FIRST DAY BEFORE THE PRIMARY.

Sec. 2. Effective with respect to all elections occurring on or after January 1, 1990, G.S. 163-74(b) reads as rewritten:

"(b) Change of Party Affiliation or Unaffiliated Status. -- No registered elector shall be permitted to change the record of his party affiliation or unaffiliated status for a primary, second primary or special or general election after the close of the registration books immediately prior to any such election. Any registrant who desires to have the record of his party affiliation or unaffiliated status changed on the registration book shall, no later than the twenty-first day (not including Saturdays and Sundays) before the election go to the chairman or the supervisor of elections of the county board of elections or to other registration officials specified in G.S. 163-80 and request that the change be made. Before being permitted to have the change made, the chairman, supervisor of elections or other registration official shall require the registrant to take the following oath, and it shall be the duty of the elections officer to administer it:

(1) If the voter desires to change from one political party to another, or from unaffiliated to a political party:

I, ... do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the ..... Party (or from unaffiliated status) to the ..... Party, and

that such change of affiliation be made on the registration records in the manner provided by law, so help me, God.

(2) If the voter desires to change his affiliation with any political party to unaffiliated status:

I, ... do solemnly swear (or affirm) that I desire in good faith to change my party affiliation with the ..... Party to unaffiliated and that such change of affiliation be made on the registration records in the manner provided by law, so help me, God.

Upon receipt of the required oath, the county board of elections shall immediately change the record of the registrant's party affiliation, or unaffiliated status, to conform to that stated in the oath. Thereafter the voter shall be considered registered and qualified to vote in accordance with the effected change.

Provided, in the event that a registrant has the record of his party affiliation or unaffiliated status changed later than the 21st day (not including Saturdays and Sundays) before a primary, the registrant shall not be entitled to vote in that primary."

-----ALLOWING A COUNTY BOARD TO SEND LESS THAN A FULL SUPPLY OF BALLOTS TO A PRECINCT, IF A FULL SUPPLY IS AVAILABLE.

Sec. 3. Effective with respect to all elections occurring on or after September 1, 1989, G.S. 163-142 reads as rewritten:

"*§ 163-142. Number of ballots to be furnished each voting place; packaging; date of delivery; receipt for ballots; accounting for ballots.*

The county board of elections shall furnish each precinct voting place with each kind of ballot to be voted in the primary or election in a number equal to ~~one hundred percent (100%)~~ at least eighty percent (80%) of the number of persons registered to vote in the primary or election in the precinct. Provided that in those instances where precincts are provided with less than a number of ballots equal to one hundred percent (100%) of the number of voters registered to vote in the primary or election in the precinct, the responsible board of elections shall ensure that a number of additional ballots are stored in its offices for distribution to precincts where the need for additional ballots becomes evident so that a number of ballots equal to one hundred percent (100%) of the number of registered voters in the primary or election in each precinct is available.

Each kind of ballot shall be wrapped in a separate package or packages for each precinct voting place. The number of ballots to be placed in each package shall be determined by the chairman of the county board of elections, and the outside of each package shall be marked or stamped to show the kind of ballot and the number contained.

Three days before the primary or election, the county board of elections shall deliver to such precinct registrar the required number of ballots of each kind to be voted in his precinct, and the registrar shall immediately give a receipt for the ballots delivered to him in accordance with the information marked or stamped on the ballot packages.

Within three days after the primary or election, the registrar shall deliver to the county board of elections all ballots spoiled in his precinct. At the same time he shall also deliver to the county board of elections all unused ballots from his precinct. Thereupon, the county board of elections shall make a check to ascertain whether the total of spoiled ballots and unused ballots, when added to the number of ballots cast in the precinct, equal the number of ballots furnished to and receipted for by the registrar prior to the primary or election.

The provisions of this section shall not apply to voting places at which voting machines are used."

Sec. 4. Effective upon ratification of this act, G.S. 163-161 reads as rewritten:

"(a) Discretionary authority. -- The board of county commissioners, with the approval of the county board of elections, may adopt and purchase or lease a voting system of a type approved by the State Board of Elections for use in some or all voting places in the county at some or all primaries and elections. Specifically, the board may purchase a voting system upon an installment basis or otherwise, or it may lease a voting system with or without an option to purchase.

The board of county commissioners may decline to adopt and purchase or lease any voting system recommended by the county board of elections, but may not adopt and purchase or lease any voting system that has not been approved by the county board of elections. Provided that no board of county commissioners may purchase any item of equipment of an optical-scanning voting system if the manufacturer or supplier is no longer certified as an authorized vendor by the State Board of Elections, unless the county board of elections specifically approves the purchase of that item of equipment."

Sec. 5. Effective upon the ratification of this act, Section 5 of Chapter 485 of the 1987 Session Laws reads as rewritten:

"Sec. 5. Sections 1, 2, and 3 of this act shall become effective with respect to elections held on or after September 1, 1987~~, except that Section 2 of this act shall expire with respect to elections held on or after September 1, 1989~~. Section 4 of this act is effective upon ratification."

Sec. 6. This act is effective as provided herein.

In the General Assembly read three times and ratified this the 13th day of July, 1989.

H.B. 1200 **CHAPTER 636**

AN ACT TO AUTHORIZE INCREASED STATE LOANS AND GRANTS TO RURAL AIRPORTS NOT RECEIVING FEDERAL FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 63-68 is amended by adding a new subsection to read:

"*§ 63-68. Limitations on State financial aid.*

Grants and loans of funds authorized by this Article shall be subject to the following conditions and limitations:

(1) Loans and grants may be for such projects, activities, or facilities as would in general be eligible for approval by the Federal Aviation Administration or its successor agency or agencies with the exception that the requirement that the airport be publicly owned shall not be applicable. Further, airport terminal and security areas, seaplane bases, and heliports are also eligible for State financial aid.

(2) Loans and grants of State funds shall be limited to a maximum of fifty percent (50%) of the nonfederal share of the total cost of any project for which aid is requested, and shall be made only for the purpose of supplementing such other funds, public or private, as may be available from federal or local sources provided, however, using one hundred percent (100%) State funding in its discretion the Department of Transportation may purchase, install and maintain navigational aids necessary for the safe, efficient use of airspace and may conduct other projects or programs to improve the safety of the air transportation system, including but not limited to, making serviceable runways and taxiways. Further, the Department of Transportation may contract out the maintenance and installation of state-owned navigational aids when necessary and may give or transfer such aids to the Federal Aviation Administration.

(3) Loans and grants of State funds shall be made from General Assembly appropriations specifically designated for aviation improvement, and from no other source. The Department of Transportation may utilize the State Aviation Grant Funds to cover the direct and indirect costs of administering airport grant projects and the costs of services provided by nonadministrative Department of Transportation divisions or other State agencies in connection with these projects.

(4) Notwithstanding the provisions of this section or G.S. 63-67, the Department of Transportation may allow up to ten percent (10%) of State aviation grant funds to be used for maintenance on General Aviation and Air Carrier Airports having a Department of Transportation approved maintenance plan on a seventy-five percent (75%) local -- twenty-five percent (25%) State basis.

(5) Notwithstanding the provisions of this section, the Department of Transportation may allow loans and grants of State funds up to eighty percent (80%) of the nonfederal share of the total cost of the development of new or unpaved publicly owned airports identified in the North Carolina Airport System Plan, provided that such funding shall be limited to land acquisition, site preparation, basic runway, taxiway, and apron system construction, together with associated lighting and navigational aids, and construction of the primary airport access road. Electronic navigational aids, terminal buildings, access taxiways, and other items eligible for State airport aid at the rate of fifty percent (50%) of the nonfederal share of project cost shall not be eligible for the foregoing eighty percent (80%) State funding, even though constructed as part of the initial airport development.

(6) Notwithstanding the provisions of this section, the Department of Transportation may allow loans and grants of State funds up to ninety percent (90%) of the total cost of the development of new or unpaved publicly owned rural airports identified in the North Carolina Airport System Plan and receiving no federal funding. Such State funding shall be limited to land acquisition, site preparation, basic runway, taxiway, and apron system construction, together with associated lighting and navigational aids, and construction of the primary airport access road.

The Department of Transportation shall develop rules and regulations to define rural airports."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1989.

H.B. 1202 **CHAPTER 637**

AN ACT TO PROVIDE THAT CONTRACTORS ARE NOT REQUIRED TO PROVIDE WORKERS' COMPENSATION BENEFITS FOR SUBCONTRACTORS WHO HAVE NO EMPLOYEES; AND TO EXEMPT SUBCONTRACTORS WHO

HAVE NO EMPLOYEES FROM THE REQUIREMENT OF COMPLIANCE WITH G.S. 97-93.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-19 reads as rewritten:

"*§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.*

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by the Industrial Commission, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service less than four employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any such subcontractor, any principal or partner of such subcontractor or any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any such subcontractor, any principal or partner of such subcontractor, or any employee of such subcontractor for compensation or other benefits under this Article. If the subcontractor has no employees and waives in writing his right to coverage under this section, the principal contractor, intermediate contractor, or subcontractor subletting the contract shall not thereafter be held liable for compensation or other benefits under this Article to said subcontractor. Subcontractors who have no employees are not required to comply with G.S. 97-93. The Industrial Commission, upon demand shall furnish such certificate, and may charge therefor the cost thereof, not to exceed twenty-five cents (25¢).

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1989.

S.B. 879 **CHAPTER 638**

AN ACT TO ESTABLISH THE PAWNBROKERS MODERNIZATION ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 91 of the General Statutes, and any local modifications thereto, is repealed.

Sec. 2. The North Carolina General Statutes are amended by adding a new Chapter to read:

"Chapter 91A.

"Pawnbrokers Modernization Act of 1989.

"§ *91A-9. Short title.*

This act shall be known and may be cited as the Pawnbrokers Modernization Act of 1989.

"§ *91A-10. Purpose.*

The making of pawn loans and the acquisition and disposition of tangible personal property by and through pawnshops vitally affects the general economy of this State and the public interest and welfare of its citizens. In recognition of these facts, it is the policy of this State and the purpose of the Pawnbrokers Modernization Act of 1989 to:

(1) Ensure a sound system of making loans and acquiring and disposing of tangible personal property by and through pawnshops, and to prevent unlawful property transactions, particularly in stolen property, through licensing and regulating pawnbrokers;

(2) Provide for licensing fees and investigation fees of licensees;

(3) Ensure financial responsibility to the State and the general public;

(4) Ensure compliance with federal and State laws; and

(5) Assist local governments in the exercise of their police authority.

"§ *91A-11. Definitions.*

As used in this Article, the following definitions shall apply:

(1) 'Pawn' or 'Pawn transaction' means a written bailment of personal property as security for a debt, redeemable on certain terms within 180 days, unless renewed, and with an implied power of sale on default.

(2) 'Pawnbroker' means any person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.

(3) 'Pawnshop' means the location at which, or premises in which, a pawnbroker regularly conducts business.

(4) 'Person' means any individual, corporation, joint venture, association, or any other legal entity, however organized.

(5) 'Pledged goods' means tangible personal property which is deposited with, or otherwise actually delivered into, the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

(6) 'Purchase' means any item purchased from an individual for the purpose of resale whereby the seller no longer has a vested interest in the item.

"§ *91A-12. Pawnbroker authority.*

A pawnbroker licensee is authorized to: (i) make loans on pledges of tangible personal property, (ii) deal in bullion stocks, (iii) purchase merchandise for resale from dealers, traders, and wholesale suppliers and (iv) use its capital and funds in any lawful manner within the general scope and purpose of its creation. Notwithstanding the provisions of this section, no pawnbroker has the authority enumerated in this section unless he has fully complied with the laws regulating the particular transactions involved.

"§ *91A-13. License required.*

It is unlawful for any person, firm, or corporation to establish or conduct a business of pawnbroker unless such person, firm, or corporation has procured a license to conduct business in compliance with the requirements of this Chapter.

"§ *91A-14. Requirements for licensure.*

(a) To be eligible for a pawnbroker's license, an applicant must:

(1) Be of good moral character; and

(2) Not have been convicted of a felony within the last 10 years.

(b) Every person, firm or corporation desiring to engage in the business of pawnbroker shall petition the appropriate city or county agency in the area in which the pawnshop is to be operated for a license to conduct such business. Such petitions shall provide:

(1) The name and address of the person, and, in case of a firm or corporation, the names and addresses of the persons composing such firm or of the officers, directors, and

stockholders of such corporation, excluding shareholders of publicly traded companies;

(2) The name of the business and the street and mailing address where the business is to be operated;

(3) A statement indicating the amount of net assets or capital proposed to be used by the petitioner in operation of the business; this statement shall be accompanied by an unaudited statement from an accountant or certified public accountant verifying the information contained in the accompanying statement;

(4) An affidavit by the petitioner that he has not been convicted of a felony; and

(5) A certificate from the chief of police, or sheriff of the county, or the State Bureau of Investigation that the petitioner has not been convicted of a felony.

(c) Licenses shall be granted under this Chapter by the city if the pawnshop is to be operated within the corporate limits of a city as defined by G.S. 160A-1, and by a county if it is to be operated outside the corporate limits of any city as defined by G.S. 160A-1.

(d) Any license granted under this Chapter may be revoked by the county or city issuing it, after a hearing, for substantial abuses of this Chapter by the licensee.

"*§ 91A-15. Record keeping requirements.*

(a) Every pawnbroker shall keep consecutively numbered records of each and every pawn transaction, which shall correspond in all essential particulars to a detachable pawn ticket or copy thereof attached to the record.

(b) The pawnbroker shall, at the time of making the pawn or purchase transaction, enter upon the pawn ticket a record of the following information which shall be typed or written in ink and in the English language:

(1) A clear and accurate description of the property, including model and serial number if indicated on the property;

(2) The name, residence address, phone number, and date of birth of pledgor;

(3) Date of the pawn transaction;

(4) Type of identification and the identification number accepted from pledgor;

(5) Description of the pledgor including approximate height, weight, sex, and race;

(6) Amount of money advanced;

(7) The date due and the amount due;

(8) All monthly pawn charges, including interest, annual percentage rate on interest, and total recovery fee; and

(9) Agreed upon 'stated value' between pledgor and pawnbroker in case of loss or destruction of pledged item; unless otherwise noted, 'stated value' is the same as the loan value.

(c) The following shall be printed on all pawn tickets:

(1) The statement that 'ANY PERSONAL PROPERTY PLEDGED TO A PAWNBROKER WITHIN THIS STATE IS SUBJECT TO SALE OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT MADE ON THE ACCOUNT FOR A PERIOD OF 60 DAYS PAST MATURITY DATE OF THE ORIGINAL CONTRACT. NO FURTHER NOTICE IS NECESSARY.';

(2) The statement that 'THE PLEDGOR OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE PLEDGOR'S TO SELL OR PAWN.';

(3) The statement that 'THE ITEM PAWNED IS REDEEMABLE ONLY BY THE BEARER OF THIS TICKET OR BY IDENTIFICATION OF THE PERSON MAKING THE PAWN.'; and

(4) A blank line for the pledgor's signature and the pawnbroker's signature or initials.

(d) The pledgor shall sign the pawn ticket and shall receive an exact copy of the pawn ticket which shall be signed or initialed by the pawnbroker or any employee of the pawnbroker. These records shall be available for inspection and pickup each regular workday by the sheriff of the county or the chief of police of the municipality in which the pawnshop is located. These records shall be a correct copy of the entries made of the pawn or purchase transaction and shall be carefully preserved without alteration, and shall be available during regular business hours.

(e) Except as otherwise provided in this Chapter, any person presenting a pawn ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods described on the ticket.

"§ *91A-16. Pawnbroker fees; interest rates.*

No pawnbroker shall demand or receive an effective rate of interest greater than two percent (2%) per month, and no other charge of any description or for any purpose shall be made by the pawnbroker, except that the pawnbroker may charge, contract for, and recover an additional monthly fee for the following services, including but not limited to:

(1) Title investigation;

(2) Handling, appraisal, and storage;

(3) Insuring a security;

(4) Application fee;

(5) Making daily reports to local law enforcement officers; and

(6) For other expenses, including losses of every nature, and all other services.

In no event may the total of the above listed monthly fees on a pawn transaction exceed twenty percent (20%) of the principal up to a maximum of the following:

First month	$100.00
Second month	75.00
Third month	75.00
Fourth month and thereafter	50.00

In addition, pawnbrokers may charge fees for returned checks as allowed by G.S. 25-3-512.

"*§ 91A-17. Pawnbroker transactions.*

In every pawn transaction:

(1) The original pawn contract shall have a maturity date of not less than 30 days, provided that nothing herein shall prevent the pledgor from redeeming the property before the maturity date;

(2) Any personal property pledged to a pawnbroker in this State is subject to sale or disposal when there has been no payment made on the account for a period of 60 days past maturity date of the original contract; provided that the contract between the pledgor and the pawnbroker is renewable if renewal is agreed upon by both the parties;

(3) Every pawn ticket or receipt for such pawn shall have printed thereon the provisions of subdivision (1) of this section which shall constitute: (i) notice of such sale or disposal, (ii) notice of intention to sell or dispose of the property without further notice, and (iii) consent to such sale or disposal. The pledgor thereby forfeits all right, title and interest of, in, and to such pawned property to the pawnbroker who thereby acquires absolute title to the same, whereupon the debt is satisfied and the pawnbroker may sell or dispose of the unredeemed pledges as his own property. Any sale or disposal of property under this section terminates all liability of the pawnbroker and vests in the purchaser the right, title, and interest of the borrower and the pawnbroker;

(4) If the borrower loses his pawn ticket he shall not thereby forfeit his right to redeem, but may, before the lapse of the redemption period, make an affidavit with indemnification for such loss. The affidavit shall describe the property pawned and shall take the place of the lost pawn ticket unless

the pawned property has already been redeemed with the original pawn ticket; and

(5) A pledgor is not obligated to redeem pledged goods or make any payment on a pawn transaction.

"§ *91A-18. Prohibitions.*

A pawnbroker shall not:

(1) Accept a pledge from a person under the age of 18 years;

(2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;

(3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this Chapter;

(4) Fail to exercise reasonable care to protect pledged goods from loss or damage;

(5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. In the event the pledgor and pawnbroker cannot agree as to replacement, the pawnbroker shall reimburse the pledgor in the amount of the value agreed upon pursuant to G.S. 91A-15(b);

(6) Take any article in pawn, pledge, or as security from any person, which is known to such pawnbroker to be stolen, unless there is a written agreement with local or State police;

(7) Sell, exchange, barter, or remove from the pawnshop any goods pledged, pawned, or purchased earlier than 48 hours after the transaction, except in case of redemption by pledgor or items purchased for resale from wholesalers;

(8) Operate more than one pawnshop under one license, and such shop must be at a permanent place of business; or

(9) Take as pledged goods any manufactured mobile home, recreational vehicle, or motor vehicle other than a motorcycle.

"§ *91A-19. Penalties.*

(a) Every person, firm, or corporation, their guests or employees, who shall knowingly violate any of the provisions of this Chapter, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be fined a sum not to exceed five hundred dollars ($500.00) for each offense, and at the discretion of the court, may be imprisoned for a period of time not to exceed six months. If the violation is by an owner or major stockholder or managing partner of the pawnshop and the violation is knowingly committed by the owner, major stockholder,

or managing partner of the pawnshop, then the license of the pawnshop may be suspended at the discretion of the court.

(b) The provision of subsection (a) shall not apply to violations of G.S. 91A-18(6) which shall be prosecuted under the North Carolina criminal statutes.

(c) Any contract of pawn the making or collecting of which violates any provision of this Chapter, except as a result of accidental or bona fide error of computation, shall be void, and the licensee shall have no right to collect, receive or retain any interest or fee whatsoever with respect to such pawn.

"*§ 91A-20. Municipal or county authority.*

All of the counties and cities as defined by G.S. 160A-1 may by ordinance adopt the provisions of this Chapter and may adopt such further rules and regulations as the governing bodies of the counties and cities deem appropriate; Provided, however, no county or city may regulate:

(1) Interest, fees, or recovery charges;

(2) Hours of operation, unless such regulation applies to businesses generally;

(3) The nature of the business or type of pawn transaction; or

(4) License fees in excess of rates set by the State.

"*§ 91A-21. License renewal.*

Notwithstanding any provision of this Chapter to the contrary, any person, firm, or corporation licensed as a pawnbroker on or before October 1, 1989, shall continue in force until the natural expiration thereof and all other provisions of this Chapter shall apply to such license. Such pawnbroker shall be eligible for renewal of his license upon its expiration or subsequent renewals, provided such license complies with the requirements for renewal that were in effect immediately prior to October 1, 1989.

"*§ 91A-22. Bond.*

Every person, firm, or corporation licensed under this Chapter shall, at the time of receiving the license, file with the city or county issuing the license a bond payable to such city or county in the sum of five thousand dollars ($5,000), to be executed by the licensee, and by two responsible sureties or a surety company licensed to do such business in this State, to be approved by the city or county, which shall be for the faithful performance of the requirements and obligations pertaining to the business so licensed. The city or county may sue for forfeiture of the bond upon a breach thereof. Any person who obtains a judgement against a pawnbroker and upon which judgement execution is returned unsatisfied may maintain an action in his own name upon the bond, to satisfy the judgement."

Sec. 3. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 14th day of July, 1989.

H.B. 615 **CHAPTER 639**

AN ACT TO AUTHORIZE THE CITY OF SOUTHPORT TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, AND CONCERNING THE DATE OF THE ELECTION CANVASS IN THE TOWN OF CALABASH.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Southport Board of Aldermen may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the City of Southport that is subject to sales tax imposed by the State under G.S. 105-164.4(3) and on the rental of all private residences and cottages, regardless whether the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the Southport tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the tax collector under this section is

not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

The tax collector may collect any unpaid taxes levied under this act through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The Southport Board of Aldermen may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

(e) Distribution and use of tax revenue. The tax collector shall remit the proceeds of this tax to the city on a monthly basis. The funds received by the city pursuant to this act shall be used to promote tourism and economic development, for waterfront development, and for other public purposes.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than two weeks after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Southport Board of Aldermen. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 1.1. Section 3 of Chapter 593, Session Laws of 1989 is amended by adding the following at the end:

"Notwithstanding G.S. 163-175, the canvass of the election shall be conducted on August 28, 1989."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 1989.

S.B. 755 **CHAPTER 640**

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives; and

Whereas, the President Pro Tempore of the Senate and the Speaker of the House of Representatives have made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

-----PRESIDENT PRO TEMPORE OF THE SENATE

Section 1. Clyde Lawson of Forsyth County is appointed to the North Carolina Manufactured Housing Board, for a term to expire on September 30, 1992. This is a categorical appointment for a setup contractor. The appointment made by this section is for a term to begin on October 1, 1989.

Sec. 1.1. Henry M. Von Oesen of New Hanover County is appointed to the North Carolina Hazardous Waste Management Commission for a term to expire June 30, 1992. Dorothy Kilpatrick of Henderson County is appointed to the North Carolina Hazardous Waste Management Commission for a term to expire June 30, 1991. All appointments made by this section are for terms to begin July 14, 1989.

-----SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sec. 1.2. Mary Odom of Scotland County is appointed to the North Carolina Hazardous Waste Management Commission for a term to expire June 30, 1992. Dr. Lonnie Sharpe, Jr., of Guilford County is appointed to the North Carolina Hazardous Waste Management Commission for a term to expire June 30, 1991. All appointments made by this section are for terms to begin July 14, 1989.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 1989.

S.B. 77 **CHAPTER 641**

AN ACT TO MAKE THE POSSESSION OF ANY AMOUNT OF COCAINE OR PHENCLYCLIDINE A FELONY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95(d) reads as rewritten:

"(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars ($2,000), or both in the discretion of the court. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, ~~including one-half gram or more of phencyclidine,~~ the violation shall be punishable as a Class I felony. If the controlled substance is phenclyclidine, or ~~one gram or more of~~ cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars ($500.00), or both in the discretion of the court;

(4) A controlled substance classified in Schedule VI shall be guilty of a misdemeanor and shall be sentenced to a term of

imprisonment of not more than 30 days or fined not more than one hundred dollars ($100.00), or both, in the discretion of the court, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a general misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony."

Sec. 2. This act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

S.B. 486 **CHAPTER 642**

AN ACT TO AUTHORIZE THE NORTH CAROLINA WILDLIFE RESOURCES COMMISSION TO SCHEDULE MANAGED HUNTS FOR GAME BIRDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-264(d) reads as rewritten:

"(d) The Wildlife Resources Commission may schedule managed hunts for any species of ~~big game~~ wildlife to be held on game lands. Participants in such hunts shall be selected at random by computer from properly licensed applicants. A nonrefundable fee of five dollars ($5.00) will be required of each applicant to defray the cost of processing the applications."

Sec. 2. G.S. 113-291.2(a) reads as rewritten:

"(a) In accordance with the supply of wildlife and other factors it determines to be of public importance, the Wildlife Resources Commission may fix seasons and bag limits upon the wild animals and wild birds authorized to be taken that it deems necessary or desirable in the interests of the conservation of wildlife resources. The authority to fix seasons includes the closing of seasons completely when

necessary and fixing the hours of hunting. The authority to fix bag limits includes the setting of season and possession limits. Different seasons and bag limits may be set in differing areas; early or extended seasons and different or unlimited bag limits may be authorized on controlled shooting preserves, game lands, and public hunting grounds; and special or extended seasons may be fixed for those engaging in falconry, using primitive weapons, or taking wildlife under other special conditions. Unless modified by rules of the Wildlife Resources Commission, the seasons, shooting hours, bag limits, and possession limits fixed by the United States Department of Interior or any successor agency for migratory game birds in North Carolina must be followed, and a violation of the applicable federal rules is hereby made unlawful. When the applicable federal rules require that the State limit participation in seasons and/or bag limits for migratory game birds, the Wildlife Resources Commission may schedule managed hunts for migratory game birds. Participants in such hunts shall be selected at random by computer from properly licensed applicants. A nonrefundable fee of five dollars ($5.00) shall be required of each applicant to defray the cost of processing the applications.

Where there is a muzzle-loading firearm season for deer, with a bag limit of five or more, one antlerless deer may be taken. Dogs may not be used for hunting deer during such season."

Sec. 3. G.S. 103-2 reads as rewritten:

"§ *103-2. Hunting on Sunday.*

If any person shall, except in defense of his own property, hunt on Sunday, having with him a shotgun, rifle, or pistol, he shall be guilty of a misdemeanor and pay a fine not exceeding fifty dollars ($50.00) or [be] imprisoned not exceeding 30 days. Provided, that the provisions hereof shall not be applicable to military reservations, the jurisdiction of which is exclusively in the federal ~~government,~~ government, or to field trials authorized by the Wildlife Resources Commission. Wildlife protectors are granted authority to enforce the provisions of this section."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

S.B. 584 **CHAPTER 643**

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO CONSTRUCT AND OPERATE STORM DRAINAGE SYSTEMS AS PUBLIC ENTERPRISES AND TO PROVIDE LOCAL GOVERNMENTS WITH FUNDING AND TAXING

AUTHORITY TO FINANCE THE CONSTRUCTION AND OPERATION OF STORM DRAINAGE SYSTEMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-149(c) reads as rewritten:

"(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to an effective combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation before the application of any assessment ratio. To find the actual rate limit for a particular county, divide the effective rate limit of one dollar and fifty cents ($1.50) by the county assessment ratio. Authorized purposes subject to the rate limitation are:

(1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county assessor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.

(2) Agricultural Extension. -- To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.

(3) Air Pollution. -- To maintain and administer air pollution control programs.

(4) Airports. -- To establish and maintain airports and related aeronautical facilities.

(5) Ambulance Service. -- To provide ambulance services, rescue squads, and other emergency medical services.

(6) Animal Protection and Control. -- To provide animal protection and control programs.

(6a) Arts Programs and Museums. -- To provide for arts programs and museums as authorized in G.S. 160A-488.

(6b) Auditoriums, coliseums, and convention and civic centers. -- To provide public auditoriums, coliseums, and convention and civic centers.

(7) Beach Erosion and Natural Disasters. -- To provide for shoreline protection, beach erosion control, and flood and hurricane protection.

(8) Cemeteries. -- To provide for cemeteries.

(9) Civil Preparedness. -- To provide for civil preparedness programs.

(10) Debts and Judgments. -- To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.

(10a) Defense of Employees and Officers. -- To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.

(10b) Economic Development. -- To provide for economic development as authorized by G.S. 158-12.

(11) Fire Protection. -- To provide fire protection services and fire prevention programs.

(12) Forest Protection. -- To provide forest management and protection programs.

(13) Health. -- To provide for the county's share of maintaining and administering services offered by or through the county or district health department.

(14) Historic Preservation. -- To undertake historic preservation programs and projects.

(15) Hospitals. -- To establish, support and maintain public hospitals and clinics, and other related health programs and facility, or to aid any private, nonprofit hospital, clinic, related facilities, or other health program or facility.

(15a) Housing Rehabilitation. -- To provide for personnel costs related to planning and administration of housing rehabilitation programs authorized by G.S. 153A-376. This subdivision only applies to counties with a population of 400,000 or more, according to the most recent decennial federal census.

(16) Human Relations. -- To undertake human relations programs.

(16a) Industrial Development. -- To provide for industrial development as authorized by G.S. 158-7.1.

(17) Joint Undertakings. -- To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.

(18) Law Enforcement. -- To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.

(19) Libraries. -- To establish and maintain public libraries.

(20) Mapping. -- To provide for mapping the lands of the county.

(21) Medical Examiner. -- To provide for the county medical examiner or coroner.

(22) Mental Health. -- To provide for the county's share of the cost of maintaining and administering services offered by or through the area mental health, mental retardation, and substance abuse authority.

(23) Open Space. -- To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.

(24) Parking. -- To provide off-street lots and garages for the parking and storage of motor vehicles.

(25) Parks and Recreation. -- To establish, support and maintain public parks and programs of supervised recreation.

(26) Planning. -- To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.

(27) Ports and Harbors. -- To participate in programs with the North Carolina Ports Authority and provide for harbor masters.

(28) Register of Deeds. -- To provide for the operation of the office of the register of deeds of the county.

(29) Sewage. -- To provide sewage collection and treatment services as defined in G.S. 153A-274(2).

(30) Social Services. -- To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108A and 111 of the General Statutes, and by establishing and maintaining a county home.

(31) Solid Waste. -- To provide solid waste collection and disposal services, and to acquire and operate landfills.

(31a) Stormwater. -- To provide structural and natural stormwater and drainage systems of all types.

(32) Surveyor. -- To provide for a county surveyor.

(33) Veterans' Service Officer. -- To provide for the county's share of the cost of services offered by or through the county veterans' service officer.

(34) Water. -- To provide water supply and distribution systems.

(35) Watershed Improvement. -- To undertake watershed improvement projects.

(36) Water Resources. -- To participate in federal water resources development projects.

(37) Armories. -- To supplement available State or federal funds to be used for the construction (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard."

Sec. 2. G.S. 153A-274 reads as rewritten:

"§ *153A-274. Public enterprise defined.*

As used in this Article, 'public enterprise' includes:

(1) Water supply and distribution systems,

(2) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems,

(3) Solid waste collection and disposal systems and facilities,

(4) Airports,

(5) Off-street parking facilities,

(6) Public transportation ~~systems.~~ systems,

(7) Structural and natural stormwater and drainage systems of all types."

Sec. 3. G.S. 159-44 reads as rewritten:

"§ *159-44. Definitions.*

The words and phrases defined in this section shall have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

(1) 'Finance officer' means the officer performing the duties of finance officer of a unit of local government pursuant to G.S. 159-24 of the Local Government Budget and Fiscal Control Act.

(2) 'Governing board' or 'board' means the governing body of a unit of local government.

(3) 'Sinking fund' means a fund held for the retirement of term bonds.

(4) 'Unit,' 'unit of local government,' or 'local government' means counties; cities, towns, and incorporated villages; sanitary districts; mosquito control districts; hospital districts; metropolitan sewerage districts; metropolitan water districts; county water and sewer districts; and special airport districts.

(5) 'Utility or public service enterprise' includes:

i. Electric power transmission and distribution systems;

ii. Water supply facilities and distribution systems;

iii. Sewage collection and disposal systems;

iv. Gas transmission and distribution systems;
v. Public transportation systems, including but not limited to bus lines, ferries, and mass transit systems;
vi. Solid waste collection and disposal systems and facilities;
vii. Cable television systems;
viii. Off-street parking facilities and systems;
ix. Public auditoriums, coliseums, stadiums and convention centers;
x. Airport; ~~and~~
xi. Hospitals and other health-related ~~facilities.~~ facilities; and
xii. Structural and natural stormwater and drainage systems of all types."

Sec. 4. G.S. 159-81(3) reads as rewritten:

"(3) 'Revenue bond project' means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the following revenue-producing utility or public service enterprise facilities or systems owned or leased as lessee by the issuing unit:

a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.
b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.
c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.
d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.
e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.
g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.
h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.
i. Hospitals and other health-related facilities.
j. Public auditoriums, gymnasiums, stadiums, and convention centers.
k. Recreational facilities.
l. In addition to the foregoing, in the case of the State of North Carolina, any other project authorized by the General Assembly.
m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.
n. Facilities for the use of any agency or agencies of the government of the United States of America.
o. Structural and natural stormwater and drainage systems of all types.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with any of the foregoing utilities and enterprises; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which such structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project."

Sec. 5. G.S. 160A-311 reads as rewritten:

"§ *160A-311. Public enterprise defined.*

As used in this Article, the term 'public enterprise' includes:

(1) Electric power generation, transmission, and distribution systems;
(2) Water supply and distribution systems;
(3) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without;
(5) Public transportation systems;
(6) Solid waste collection and disposal systems and facilities;
(7) Cable television systems;
(8) Off-street parking facilities and systems;
(9) ~~Airports.~~ Airports;
(10) Structural and natural stormwater and drainage systems of all types."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

S.B. 773 **CHAPTER 644**

AN ACT TO ADD TO TOWING PROVISIONS CERTAIN LANGUAGE CONCERNING IMMUNITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-219.2 reads as rewritten:

"§ *20-219.2. Removal of unauthorized vehicles from private lots.*

(a) It shall be unlawful for any person other than the owner or lessee of a privately owned or leased parking space to park a motor or other vehicle in such private parking space without the express permission of the owner or lessee of such space; provided, that such private parking lot be clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto and the parking spaces within the lot be clearly marked by signs setting forth the name of each individual lessee or owner; a vehicle parked in a privately owned parking space in violation of this section may be removed from such space upon the written request of the parking space owner or lessee to a place of storage and the registered owner of such motor vehicle shall become liable for removal and storage charges. ~~No person shall be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from such lot pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from aforesaid space to place of storage.~~ Any person who removes a vehicle pursuant to this section shall not be held liable for damages for

the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(b) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than ten dollars ($10.00) in the discretion of the court.

(c) This section shall apply only to the Counties of Craven, Dare, Forsyth, Gaston, Guilford, New Hanover, Orange, Robeson, Wake, Wilson and to the Cities of Durham, Charlotte and Fayetteville."

Sec. 2. G.S. 20-219.3 reads as rewritten:

"*§ 20-219.3. Removal of unauthorized vehicles from gasoline service station premises.*

(a) No motor vehicle shall be left for more than 48 hours upon the premises of any gasoline service station without the consent of the owner or operator of the service station.

(b) The registered owner of any motor vehicle left unattended upon the premises of a service station in violation of subsection (a) shall be given notice by the owner or operator of said station of said violation. The notice given shall be by certified mail return receipt requested addressed to the registered owner of the motor vehicle.

(c) Upon the expiration of 10 days from the return of the receipt showing that the notice was received by the addressee, such vehicle left on the premises of a service station in violation of this section may be removed from the station premises to a place of storage and the registered owner of such vehicle shall become liable for the reasonable removal and storage charges and the vehicle subject to the storage lien created by G.S. 44A-1 *et seq.* ~~No person shall be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any vehicle removed from such station premises pursuant to this section except where such vehicle is willfully or maliciously damaged in the removal from such station premises to place of storage.~~ Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(d) In the alternative, the station owner or operator may charge for storage, assert a lien, and dispose of the vehicle under the terms of

G.S. 44A-4(b) through (g). The proceeds from the sale of the vehicle shall be disbursed as provided in G.S. 44A-5."

Sec. 3. G.S. 61-7 reads as rewritten:

"*§ 61-7. Governing body of assembly authorized to adopt traffic regulations.*

(a) The governing body of any religious organization or assembly may by appropriate resolution establish rules and regulations with respect to the use of the streets, roads, alleys, driveways, and parking lots on the grounds or premises owned or under the exclusive control of such organization, and it shall be unlawful for any person to park a motor vehicle or other vehicle on the streets, roads or on the premises of a religious assembly where parking has been prohibited by the religious assembly by the erection of 'No Parking' signs at each space on the street, road or on the premises where parking is prohibited. Each space in which parking is prohibited shall be clearly designated as such by a sign no smaller than 24 inches by 24 inches. All rules and regulations adopted pursuant to the authority of this section shall be recorded in the proceedings of said governing body and copies thereof shall be filed in the office of the Secretary of State of North Carolina.

(b) It shall be unlawful for any person to park a motor vehicle or other vehicle in a parking space on the streets, roads, or premises of a religious assembly where the parking space has been designated by the religious assembly as being limited to a named individual or to a person holding a named position with the assembly; provided, that such private parking space or private parking lot be clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance to the parking lot, if within a parking lot, and provided further that the private parking spaces within the lot or the private parking spaces on the streets, roads or on the premises of the religious assembly be clearly marked by signs setting forth the name of each individual for whom the space is reserved or the name of the position held with the assembly for which space is reserved.

(c) It shall be unlawful for any person to park a motor vehicle or other vehicle on the streets or roads of a religious assembly, except where parking is expressly designated, so as to interfere with, or obstruct the free flow of vehicular traffic on the streets or roads within the assembly grounds.

(d) It shall be unlawful for any person to park a motor vehicle or other vehicle at the entrance to any driveway on the grounds of a religious assembly so as to block the driveway.

(e) Any vehicle parked in violation of subsections (a), (b), (c), or (d) may be removed by the assembly, or its agents, or its employees to a place of storage and the registered owner of such motor vehicle shall

become liable for removal and storage charges. ~~The assembly, nor any party acting under the directions of the assembly, shall be held to answer any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed from such parking space or parking lot pursuant to subsections (a), (b), (c), or (d) except when there is a claim for personal injury or where such motor vehicle is willfully, maliciously or negligently damaged in the removal from the aforesaid space to place of storage.~~ Any person who removes a vehicle pursuant to subsections (a), (b), (c), or (d) shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(f) A 'religious assembly' is defined as being a corporation or association formed for the purpose of providing a resort community for religious and recreational purposes and where the streets and roads are solely maintained by the religious assembly without governmental funds."

Sec. 4. G.S. 115C-46 reads as rewritten:

"§ *115C-46. Powers of local boards to regulate parking of motor vehicles.*

(a) Any local board of education may adopt reasonable rules and regulations with respect to the parking of motor vehicles and other modes of conveyance on public school grounds and may enforce such rules and regulations. A violation of a rule or regulation concerning parking on public school grounds is an infraction punishable by a penalty of not more than ten dollars ($10.00) unless the regulation provides that the violation is not punishable as an infraction. Rules and regulations adopted hereunder shall be made available for inspection by any person upon request.

(b) Any local board of education may adopt written guidelines governing the individual assignment of parking spaces on school grounds. Such guidelines shall give first priority treatment to the physically handicapped.

(c) Any local board of education, by rules and regulations adopted hereunder, may provide for the registration of motor vehicles and other modes of conveyance maintained, operated or parked on school grounds. Any local board of education, by rules and regulations adopted hereunder, may provide for the issuance of stickers, decals, permits or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on school grounds and may

prohibit the forgery, counterfeiting, unauthorized transfer or unauthorized use of them.

(d) Any motor vehicle parked in a parking lot on school grounds, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at each entrance thereto, in violation of the rules and regulations adopted by the local board of education, or any motor vehicle otherwise parked on school grounds in violation of the rules and regulations adopted by the county or city local board of education, may be removed from school grounds to a place of storage and the registered owner of that vehicle shall become liable for removal and storage charges. ~~No person shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from school grounds to place of storage.~~ Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages."

Sec. 5. G.S. 143-340 reads as rewritten:

"§ *143-340. Powers and duties of Secretary.*

The Secretary of Administration has the following powers and duties:

(1) To establish a meritorious service award system for State employee suggestions which may include cash awards to be paid from savings resulting from the adoption of employee suggestions, but in no case shall the cash award exceed twenty-five percent (25%) of the savings resulting during the first year following adoption or a maximum of five thousand dollars ($5,000).

(2) to (9) Repealed by Session Laws 1975, c. 879, s. 46.

(10) To require reports from any State agency at any time upon any matters within the scope of the responsibilities of the Secretary or the Department.

(11) Repealed by Session Laws 1975, c. 879, s. 46.

(12) To enter the premises of any State agency; to inspect its property; and to examine its books, papers, documents, and all other agency records and copy any of them; and any State agency shall permit such entry, examination, and copying, and upon demand shall produce without

unnecessary delay all books, papers, documents, and other records in its office and furnish information respecting its records and other matters pertaining to that agency and related to the responsibilities of the Department.

(13) Repealed by Session Laws 1975, c. 879, s. 46.

(14) With respect to the principal State offices and Departments as defined in G.S. 143A-11 and 143B-6, or a division thereof, to exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of State government. In discharging that responsibility the Secretary may in cooperation with affected State Agency Heads, do such of the following things as he deems necessary and advisable:

a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing of the following systems and services as they affect the internal management and operation of State government:
   1. Central telephone systems and telephone networks;
   2. Teleprocessing systems;
   3. Teletype and facsimile services;
   4. Satellite services;
   5. Closed-circuit TV systems;
   6. Two-way radio systems;
   7. Microwave systems;
   8. Related systems based on telecommunications technologies.

b. Coordinate the development of cost sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item a of this subdivision, in accordance with the rules and regulations adopted by the Governor and approved by the Council of State, pursuant to G.S. 143-341(8)k.

c. Assist in the development of coordinated telecommunications services or systems within and among all agencies and departments, and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item a of this subdivision.

e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State government.

f. Pursuant to G.S. 143-49 and 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

g. Pursuant to G.S. 143-341 and Chapter 146, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State government.

i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

j. Perform frequency coordination and management for State and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

k. Advise all State agencies and institutions on telecommunications management planning and related matters and provide through the State Personnel Training Center training to users with State government in telecommunications technology and systems.

l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the Police Information Network (P.I.N.) of the Department of Justice or to the Judicial Information System in the Judicial Department.

(15), (16) Repealed by Session Laws 1975, c. 879, s. 46.

(17) To supervise the work of janitors appointed by the General Assembly to perform services in connection with the sessions of the General Assembly.

(18) To adopt reasonable rules and regulations with respect to the parking of automobiles on all public grounds, subject to the approval of the Governor and Council of State, and to enforce those rules and regulations. Any person who violates a rule or regulation concerning parking on public grounds is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court. Upon the allocation of parking spaces to any agency pursuant to such rules and regulations, the agency shall adopt written guidelines governing the individual assignment of such parking spaces by the agency. Such guidelines shall give first priority treatment to the physically handicapped and to carpoolers and vanpoolers, however, first priority shall be given to those on call for duty at a time other than normal working hours. A copy of said guidelines shall be made available for inspection by any person upon request.

(19) Any motor vehicle parked in a State-owned parking lot, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto, in violation of the 'Rules and Regulations Governing State-Owned Parking Lots' dated September, 1968 or as amended, may be removed from such lot to a place of storage and the registered owner of that vehicle shall become liable for removal and storage charges. ~~No person shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed from such lots pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from aforesaid lot to place of storage.~~ Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages. Any motor vehicle parked without authorization on State-owned public grounds under the control of the Department of Administration other than a

designated parking area may be removed from that property to a storage area and the registered owner of the vehicle shall be liable for removal and storage fees.

(20) To use at all times such means as, in his opinion, may be effective in protecting all public buildings and grounds from fire.

(21) To serve as a special police officer and in that capacity to have the same power of arrest as the police officers of the City of Raleigh. Such authority may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, and in addition thereto the authority of a deputy sheriff may be exercised on property owned, leased or maintained by the State located in the County of Wake.

(22) To appoint as special police officers such reliable persons as he may deem necessary, and such officers shall have the same power of arrest as herein conferred upon the Secretary. Before the Secretary or the special police officers may exercise the power of arrest, they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(23) Repealed by Session Laws 1975, c. 879, s. 46.

(24) To perform such additional duties as the Governor may direct.

(25) To make available, on a cost basis, to city and county agencies the services of the State telephone network. These services are to be charged to the local governments based on the proportional cost of maintaining and operating the system and in accordance with rules and regulations adopted by the Governor and approved by the Council of State."

Sec. 6. Article 8 of the Town Charter of Carrboro, as set forth in Section 1 of Chapter 476 of the 1987 Session Laws, reads as rewritten:

"Article 8. Regulation of Streets, Sidewalks, Bikeways, Parking, Etc.

"*Section 8-1. Regulation of Vehicles Considered Abandoned.* In addition to the authorization set forth in G.S. 160A-303(b), the town may, by ordinance, define an abandoned vehicle to include any motor vehicle parked under the circumstances listed below and may enforce such ordinance by towing under any ordinance adopted pursuant to the authorization contained in G.S. 160A-303:

(1) Any motor vehicle that is left on property owned, leased, or operated by the town contrary to an ordinance prohibiting

parking thereon during specified times or in excess of specified durations.

(2) Any motor vehicle that has been left on private property in a properly designated fire lane in violation of an ordinance prohibiting parking in such specifically designated fire lanes.

"*Section 8-2. Bikeways.* The board of aldermen may adopt ordinances regulating the use of bikeways (thoroughfares suitable for bicycles) within the town, whether such bikeways exist within the rights-of-way of public streets or along separate and independent corridors. Without limiting the foregoing, such ordinances may establish traffic regulations for bicycles travelling in designated bikeways different than those established for other types of vehicular traffic.

"*Section 8-3. Regulating Railroad Crossing.* (a) Whenever the board of aldermen concludes, based upon a record of accidents or near accidents or the opinion of a professional traffic engineer or transportation planner deemed qualified by the board that a particular grade crossing located inside or within 500 yards of the corporate boundaries of the town is especially hazardous, the board may adopt an ordinance requiring the railroad company to install and maintain such warning signs, gates, lights or devices as the board deems reasonably necessary in the interest of public safety. The ordinance may provide that up to seventy-five percent (75%) of the cost of the acquisition and installation (or replacement) of such devices as well as one hundred percent (100%) of the maintenance cost shall be borne by the railroad, and the remaining cost shall be borne by the town.

(b) The intent of the section is to modify the provisions of G.S. 160A-298 as they would otherwise apply to the Town of Carrboro.

"*Section 8-4. Removal of Unauthorized Vehicles from Private Property.* (a) Subject to subsection (b) of this section, any motor vehicle left on private property within the town of Carrboro for more than 24 hours in an area described in subsection (b)(1) or for any period of time in an area described in subsections (b)(2) and (b)(3) without permission of the person or party having possession (actual or constructive) of such property may be removed by or at the direction of such party to a place of storage, and the registered owner of such motor vehicle shall become liable for removal and storage charges. ~~No person shall be held to answer in any civil or criminal action to any owner, lien holder or other person legally entitled to the possession of any motor vehicle removed under this section except where the person or party against whom liability is asserted acted maliciously in directing the removal of the vehicle or negligently in towing or storing the vehicle.~~ Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the

removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed except where the person or party against whom liability is asserted acted maliciously in directing the removal of the vehicle; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(b) The provisions of subsection (a) shall apply only to the following areas:

(1) Private roads, including adjacent shoulders, sidewalks, and medians, so long as at every entrance to such private road or at every entrance to a subdivision or development containing private roads, there is prominently displayed a sign that contains the following message or any equally explicit message, printed in letters at least three inches high: 'Private Road, No Parking In Or Along Road, Violators Towed At Their Expense.' Such sign shall also display a telephone number to be called for information about a towed vehicle.

(2) Privately owned parking lots or areas, regardless of whether such lots or areas fall within the definition of 'public vehicular areas' contained in G.S. 20-4.01(32), so long as there is prominently displayed at every entrance to such lots or areas a sign that clearly informs, in letters at least three inches in height, any person driving a motor vehicle onto such lot or areas:

a. Either that (i) parking within such lot is restricted in a manner indicated in such entrance sign, or (ii) parking within such lot is restricted in a manner indicated in signs placed throughout the lot, (and such signs are placed in such a manner and location as reasonably to inform persons seeking to park in specific spaces what limitations apply to such spaces); and

b. That violators may be towed at their expense; and

c. What the telephone number is that should be called for information about a towed vehicle. (This information may be in letters or numbers less than three inches in height.)

(3) Any driveway or parking space that is manifestly designed to serve a single family or two-family private residence, as well as any other private property that is manifestly not designed or intended for the parking of motor vehicles.

(c) A property owner or possessor who removes a vehicle or has a vehicle removed pursuant to this section shall immediately thereafter

contact the Town of Carrboro police department and inform such agency that the vehicle has been removed, who removed it, why it was removed, and where it can be reclaimed, and shall provide such agency with the registration plate number or other identification of such vehicle."

Sec. 7. Section 3 of Chapter 1023 of the 1987 Session Laws reads as rewritten:

"*Sec. 3.* (a) The governing board of a town may enact reasonable ordinances with respect to the parking of motor vehicles in any off-street parking facilities owned by that town and to enforce those ordinances.

(b) Any motor vehicle parked in a town-owned parking lot, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches stating the ordinance regulations with respect to that lot and prominently displayed at the entrance thereto, in violation of an ordinance adopted pursuant to this act may be removed from such lot to a place of storage operated by the town and the registered owner of that vehicle shall become liable for removal and storage charges. ~~No person acting as an agent for the town shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed pursuant to this act except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from aforesaid lot to place of storage.~~ Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(c) This section applies to the Town of Chapel Hill only."

Sec. 8. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

H.B. 562 **CHAPTER 645**

AN ACT TO RAISE THE FEE FOR SERVICE ON NONRESIDENT MOTORISTS AND FOR SERVICE WITH THE COMMISSIONER OF INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-105 reads as rewritten:

"§ 1-105. Service upon nonresident drivers of motor vehicles and upon the personal representatives of deceased nonresident drivers of motor vehicles.

The acceptance by a nonresident of the rights and privileges conferred by the laws now or hereafter in force in this State permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by such nonresident on the public highways of this State, or at any other place in this State, or the operation by such nonresident of a motor vehicle on the public highways of this State or at any other place in this State, other than as so permitted or regulated, shall be deemed equivalent to the appointment by such nonresident of the Commissioner of Motor Vehicles, or his successor in office, to be his true and lawful attorney and the attorney of his executor or administrator, upon whom may be served all summonses or other lawful process in any action or proceeding against him or his executor or administrator, growing out of any accident or collision in which said nonresident may be involved by reason of the operation by him, for him, or under his control or direction, express or implied, of a motor vehicle on such public highways of this State, or at any other place in this State, and said acceptance or operation shall be a signification of his agreement that any such process against him or his executor or administrator shall be of the same legal force and validity as if served on him personally, or on his executor or administrator.

Service of such process shall be made in the following manner:

(1) By leaving a copy thereof, with a fee of ~~three dollars ($3.00),~~ ten dollars ($10.00), in the hands of the Commissioner of Motor Vehicles, or in his office. Such service, upon compliance with the other provisions of this section, shall be sufficient service upon the said nonresident.

(2) Notice of such service of process and copy thereof must be forthwith sent by certified or registered mail by plaintiff or the Commissioner of Motor Vehicles to the defendant, and the entries on the defendant's return receipt shall be sufficient evidence of the date on which notice of service upon the Commissioner of Motor Vehicles and copy of process were delivered to the defendant, on which date service on said defendant shall be deemed completed. If the defendant refuses to accept the certified or registered letter, service on the defendant shall be deemed completed on the date of such refusal to accept as determined by notations by the postal authorities on the original envelope, and if such date cannot be so determined, then service shall be deemed completed on the date that the certified or registered letter is returned to the plaintiff or Commissioner of Motor Vehicles,

as determined by postal marks on the original envelope. If the certified or registered letter is not delivered to the defendant because it is unclaimed, or because he has removed himself from his last known address and has left no forwarding address or is unknown at his last known address, service on the defendant shall be deemed completed on the date that the certified or registered letter is returned to the plaintiff or Commissioner of Motor Vehicles.

(3) The defendant's return receipt, or the original envelope bearing a notation by the postal authorities that receipt was refused, and an affidavit by the plaintiff that notice of mailing the registered letter and refusal to accept was forthwith sent to the defendant by ordinary mail, together with the plaintiff's affidavit of compliance with the provisions of this section, must be appended to the summons or other process and filed with said summons, complaint and other papers in the cause.

Provided, that where the nonresident motorist has died prior to the commencement of an action brought pursuant to this section, service of process shall be made on the executor or administrator of such nonresident motorist in the same manner and on the same notice as ~~if~~ is provided in the case of a nonresident motorist.

The court in which the action is pending shall order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action."

Sec. 2. G.S. 58-153 reads as rewritten:

"*§ 58-153. Service of legal process upon Commissioner of Insurance.*

As an alternative to service of legal process under the provisions of Rule 4 of the Rules of Civil Procedure, the service of such process upon any company licensed or admitted and authorized to do business in this State under the provisions of this Chapter may be made by the sheriff delivering and leaving a copy of such process in the office of the Commissioner of Insurance with a deputy duly appointed by the Commissioner for such purpose or acceptance of service of such process may be made by the Commissioner of Insurance or such duly appointed deputy. As a condition precedent to a valid service of process ~~and of the action of the Commissioner in the premises,~~ under this section, the party obtaining such service shall pay to the Commissioner of Insurance at the time of service or acceptance of service the sum of ~~five dollars ($5.00),~~ ten dollars ($10.00), which such party shall recover as part of the taxable costs if he prevails in his action."

Sec. 3. G.S. 58-153.1(b) reads as rewritten:

"(b) Service of Process upon Unauthorized Insurer.

(1) Any of the following acts in this State, effected by mail or otherwise, by an unauthorized foreign or alien insurer:
a. The issuance or delivery of contracts of insurance to residents of this State or to corporations authorized to do business therein,
b. The solicitation of applications for such contracts,
c. The collection of premiums, membership fees, assessments or other considerations for such contracts, or
d. Any other transaction of business,
Is equivalent to and shall constitute an appointment by such insurer of the Commissioner of Insurance and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this State upon such insurer.

(2) Such service of process shall be made by delivering to and leaving with the Commissioner of Insurance or some person in apparent charge of his office two copies thereof and the payment to him of ~~five dollars ($5.00).~~ ten dollars ($10.00). The Commissioner of Insurance shall within four business days mail by certified or registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by certified or registered mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the transmitting post office, ~~with which the letter is registered,~~ showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(3) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subdivision (2) of

this subsection be valid ~~if~~ if: ~~served upon any person within this State who, in this State on behalf or such insurer, is~~

~~a. Soliciting insurance, or~~

~~b. Making, issuing or delivering any contract of insurance, or~~

~~c. Collecting or receiving any premium, membership fee, assessment or other consideration for insurance.~~

~~And a copy of such process is sent within 10 days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and~~

a. It is served on a person within this State who is in the State on behalf of the insurer to solicit insurance, make, issue, or deliver a contract of insurance, or collect or receive a premium, membership fee, assessment, or other consideration for insurance;

b. A copy of the process is sent within 10 days after service by certified or registered mail by the plaintiff or plaintiff's attorney to the defendant at the defendant's last known principal place of business; and

c. ~~the~~ The defendant's receipt, or the receipt issued by the transmitting post office, ~~with which the letter is registered,~~ showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(4) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(5) Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law."

Sec. 4. G.S. 58-340.35(b) reads as rewritten:

"(b) Service shall only be made upon the Commissioner of Insurance, or if absent, upon the person in charge of the Commissioner's office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the Commissioner of Insurance, the Commissioner shall forthwith forward one of the duplicate copies by

certified or registered mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading or defense in less than 30 days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner herein provided. At the time of serving any process upon the Commissioner of Insurance, the plaintiff or complainant in the action shall pay to the Commissioner of Insurance a fee ~~of five dollars ($5.00).~~ in the amount set in G.S. 58-153."

Sec. 5. G.S. 58-615(h) reads as rewritten:

"(h) Resident-Nonresident Licenses. -- The Commissioner shall issue a resident or nonresident license to an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser as follows:

(1) Resident.

An individual may qualify for a license as a resident if he resides in this State. Any license issued pursuant to an application claiming residency in this State shall be void if the licensee, while holding a resident license in this State, also holds or makes application for a resident license in, or thereafter claims to be a resident of, any other state, or ceases to be a resident of this State; provided, however, if the applicant is a resident of a county in another state, the border of which county is contiguous with the state line of this State, the applicant may qualify as a resident for licensing purposes in this State.

(2) Nonresident.

a. An individual may qualify for a license under this Article as a nonresident if he holds a like license in another state or territory of the United States. An individual may qualify for a license as a nonresident motor vehicle damage appraiser or a nonresident adjuster if the applicant's state of residency does not offer such licenses and such applicant meets all other requirements for licensure of a resident. A license issued to a nonresident of this State shall grant the same rights and privileges afforded a resident licensee, except as provided in subsection (i) of this section.

b. A nonresident of this State may be licensed without taking an otherwise required written examination if the Commissioner of the state of the applicant's residence certifies that the applicant has passed a similar written examination or has been a continuous holder, prior to the time such written examination was required, of a license like the license being applied for in this State.

c. Notwithstanding other provisions of this Article, no new bond shall be required for a nonresident broker if the Commissioner is satisfied that an existing bond covers his insurance business in this State.

d. Process Against Nonresident Licensees.

1. Each licensed nonresident agent, broker, adjuster, limited representative, or motor vehicle damage appraiser shall by the act of acquiring such license be deemed to appoint the Commissioner as his attorney to receive service of legal process issued against the agent, broker, adjuster, limited representative, or motor vehicle damage appraiser in this State upon causes of action arising within this State.
2. The appointment shall be irrevocable for as long as there could be any cause of action against the nonresident arising out of his insurance transactions in this State.
3. Duplicate copies of such legal process against such nonresident licensee shall be served upon the Commissioner either by a person competent to serve a summons, or through certified or registered mail. At the time of such service the plaintiff shall pay to the Commissioner a fee ~~of five dollars ($5.00)~~ in the amount set in G.S. 58-153, taxable as costs in the action to defray the expense of such service.
4. Upon receiving such service, the Commissioner or his duly appointed deputy shall within three business days send one of the copies of the process by registered or certified mail, to the defendant nonresident licensee at his last address of record as filed with the Commissioner.
5. The Commissioner shall keep a record of the day and hour of service upon him of all such legal process. No proceedings shall be had against the defendant nonresident licensee, and such defendant shall not be required to appear, plead or answer until the expiration of 40 days after the date of service upon the Commissioner.

e. If the Commissioner revokes or suspends any nonresident's license through a formal proceeding under this Article, he shall promptly notify the appropriate Commissioner of the licensee's residence of such action and of the particulars thereof."

Sec. 6. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

H.B. 586 **CHAPTER 646**

AN ACT TO MAKE THE PROVISIONS OF LAW REGARDING JUROR FEES IN SPECIAL PROCEEDINGS THE SAME AS IN OTHER CASES IN THE GENERAL COURT OF JUSTICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-306(c) reads as rewritten:

"(c) The following additional expenses, when incurred, are assessable or recoverable, as the case may be:

(1) Witness fees, as provided by law.

(2) Counsel fees, as provided by law.

(3) Costs on appeal, of the original transcript of testimony, if any, insofar as essential to the appeal.

(4) Fees for personal service of civil process, and other sheriff's fees, and for service by publication, as provided by law.

(5) Fees of guardians **ad litem**, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fees of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

~~(6) Fees for special jury, if any, at six dollars ($6.00) per special juror for each proceeding, except that if a special proceeding lasts more than one-half day each juror shall receive ten dollars ($10.00) per day.~~"

Sec. 2. G.S. 7A-312 reads as rewritten:

"§ *7A-312. Uniform fees for jurors: meals.*

A juror in the General Court of Justice including a petit juror, or a coroner's juror, but excluding a grand juror, ~~or a juror in a special proceeding~~ shall receive twelve dollars ($12.00) per day, except that if any person serves as a juror for more than five days in any 24-month period, the juror shall receive thirty dollars ($30.00) per day for each day of service in excess of five days. A grand juror shall receive twelve dollars ($12.00) per day. A juror required to remain overnight at the site of the trial shall be furnished adequate accommodations and subsistence. If required by the presiding judge to remain in a body during the trial of a case, meals shall be furnished the jurors during the period of sequestration. ~~A juror in a special proceeding shall receive six dollars ($6.00) for each proceeding, except that if a special proceeding lasts more than one-half day, the~~

~~special jurors shall receive ten dollars ($10.00) per day.~~ Jurors from out of the county summoned to sit on a special venire shall receive mileage at the same rate as State employees."

Sec. 3. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

H.B. 1926 **CHAPTER 647**

AN ACT TO PROVIDE FOR THE USE OF EXPERIENCE MODIFIERS IN CALCULATING AN INDIVIDUAL SELF-INSURED WORKERS' COMPENSATION MAINTENANCE FUND TAXES AND TO INCREASE THE ASSESSMENT PERCENTAGE FOR THE STOCK AND MUTUAL WORKERS' COMPENSATION SECURITY FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-100(j) reads as rewritten:

"(j) Every employer carrying his own risk under the provisions of G.S. 97-93 shall, under oath, report to the Commissioner of Insurance his payroll, subject to the provisions of this Article. Such report shall be made in form prescribed by the Commissioner of Insurance, and at the times herein provided for premium reports by insurer. The Commissioner of Insurance shall assess against such payroll a maintenance fund tax computed by taking such percent of the basic premiums charged against the same or most similar industry or business taken from the manual insurance rate then in force in this State as is assessed in the Revenue Act against the insurance carriers for premiums collected on compensation insurance policies. The Commissioner shall use the approved experience modifier of an employer in calculating the employer's maintenance fund tax liability under this subsection. Receipts collected under this subsection shall be deposited to the credit of the State Treasurer as general fund revenue."

Sec. 2. G.S. 97-109 reads as rewritten:

"*§ 97-109. Contributions by stock carriers of ~~1%~~ 2% of net written premiums.*

For the privilege of carrying on the business of workers' compensation insurance in this State, every stock carrier ~~shall pay into the stock fund on the first day of September, 1935, a sum equal to one per centum (1%) of its net written premiums as shown by the return hereinbefore prescribed for the period ending June 30, 1935, and thereafter each such stock carrier~~, upon filing each semiannual return as prescribed in G.S. 97-108, shall pay into the stock fund a

sum equal to ~~one per centum (1%)~~ two percent (2%) of its net written premiums for the period covered by ~~such~~ the return."

Sec. 3. G.S. 97-116 reads as rewritten:

"*§ 97-116. Contributions by mutual carriers of ~~1%~~ 2% of net written premiums.*

For the privilege of carrying on the business of workers' compensation insurance in this State, every mutual carrier ~~shall pay into the mutual fund on the first day of September, 1935, a sum equal to one per centum (1%) of its net written premiums, as shown by the return hereinbefore prescribed for the period ending June 30, 1935, and thereafter each such mutual carrier~~, upon filing each semiannual return as prescribed in G.S. 97-115, shall pay into the mutual fund a sum equal to ~~one per centum (1%)~~ two percent (2%) of its net written ~~premiums, as shown~~ premiums for the period covered by ~~such~~ the return."

Sec. 4. Section 1 of this act is effective for taxable years beginning on or after January 1, 1990; the remaining sections are effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

S.B. 995 **CHAPTER 648**

AN ACT TO ESTABLISH MAXIMUM FEES TO PROVIDE FINANCING FOR THE BOARD OF DENTAL EXAMINERS TO REGULATE DENTAL ANESTHESIA AND PARENTERAL SEDATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-30.1 reads as rewritten:

"*§ 90-30.1. (Expires June 30, 1990) Standards for general anesthesia and parenteral ~~sedation.~~ sedation; fees authorized.*

The North Carolina Board of Dental Examiners may establish by regulation reasonable education, training, and equipment standards for safe administration and monitoring of general anesthesia and parenteral sedation for outpatients in the dental setting. Regulatory standards may include a permit process for general anesthesia and parenteral sedation by dentists. The requirements of any permit process adopted under the authority of this section must include provisions that will allow a dentist to qualify for continued use of general anesthesia, if he or she is licensed to practice dentistry in North Carolina and shows the Board that he or she has been utilizing general anesthesia in a competent manner for the five years preceding July 1, 1988, and his or her office facilities pass an on-site

examination and inspection by qualified representatives of the Board. In order to provide the means of regulating general anesthesia and parenteral sedation, including examination and inspection of dental offices involved, the Board may charge and collect fees established by its rules and regulations not exceeding fifty dollars ($50.00) for each permit application and each annual renewal, and not exceeding three hundred fifty dollars ($350.00) for each office inspection."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

S.B. 1330 **CHAPTER 649**

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1989.

The General Assembly of North Carolina enacts:

-----BUDGET CONTINUATION

Section 1. Section 1 of Chapter 547, Session Laws of 1989, reads as rewritten:

"Section 1. The Director of the Budget may continue through ~~July 15~~ July 28, 1989, to allocate funds for expenditure for current operations by State departments, institutions and agencies at a level not to exceed the level at which those operations were funded as of June 30, 1989, except as reduced by enactment of Chapter 500, Session Laws of 1989, as reflected in the reports of the House Committee on Appropriations, the Senate Committee on Appropriations, and the report of the Committee of Conference on Senate Bill 43, 1989 Session. Nothing in this section repeals any other act passed by the 1989 General Assembly appropriating funds. To the extent necessary to implement this authorization, funds currently available in the appropriate State funds and in cash balances, federal receipts, and departmental receipts shall be considered appropriated by the General Assembly."

-----GASTON/MECKLENBURG PILOT MEDIATION

Sec. 2. (a) Section 16(b) of Chapter 830, Session Laws of 1987, as amended by Section 2 of Chapter 1036, Session Laws of 1987, and as rewritten by Section 2 of Chapter 547, Session Laws of 1989, reads as rewritten:

"(b) Effective from ratification of this act through ~~July 15~~ July 28, 1989, subsection 162(b) of Chapter 761 of the 1983 Session Laws is rewritten to read:

'(b) This section applies to Mecklenburg and to Gaston Counties only, each of which may establish a pilot program.'"

(b) Section 16(c) of Chapter 830, Session Laws of 1987, as amended by Section 2 of Chapter 1036, Session Laws of 1987, and as rewritten by Section 2 of Chapter 547, Session Laws of 1989, reads as rewritten:

"(c) Effective from ratification of this act through ~~July 15~~ July 28, 1989, subsection 162(d) of Chapter 761 of the 1983 Session Laws is rewritten to read:

'(d) This section shall be effective in Mecklenburg County only when both parents are residents of Mecklenburg County and in Gaston County only when both parents are residents of Gaston County.'"

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

H.B. 564 **CHAPTER 650**

AN ACT TO ALLOW ONE MEMBER OF THE STATE BOARD OF COSMETIC ART EXAMINERS TO BE A TEACHER OF COSMETIC ART, TO RESTRICT THE PAYMENT OF PER DIEM, AND TO AMEND THE PROVISIONS REGARDING THE ADMINISTRATION OF EXAMINATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 88-13(a) reads as rewritten:

"(a) The State Board of Cosmetic Art Examiners is established to consist of four members appointed by the Governor and two members appointed by the General Assembly on July 1, 1987. Five members shall be experienced, licensed cosmetologists who have practiced all branches of cosmetic art in this State for at least five years immediately preceding appointment to the Board. ~~These~~ Four of these members shall be free of any connection with any cosmetic art school, college, academy, or training school during their service on the Board. Of the four members appointed by the Governor, one shall be a teacher of cosmetic art currently employed as a teacher by a North Carolina public school, community college, or a cosmetic art school, college, academy, or training school and one ~~The other member~~ shall be a person who is not licensed under this Chapter and who shall represent the interest of the public at large."

Sec. 2. G.S. 88-15 reads as rewritten:

"*§ 88-15. Compensation and expenses of Board members; inspectors; reports; budget.*

Each member of the Board of Cosmetic Art Examiners shall receive compensation for his services and expenses as provided in G.S. 93B-5 but shall be limited to payment for services deemed to be official business of the ~~Board.~~ Board when such business exceeds three continuous hours per day. Official business of the Board shall include meetings called by the chairman, supervision or administering of examinations, or investigations or inspections made subject to the regulations cited in the following paragraph. No Board member shall be authorized to attend trade shows or to travel out of the State and no per diem or travel expenses shall be paid for such ~~travel unless said Board member is an officer of the organization holding such meeting,~~ travel.

Said Board, with the approval of the Director of the Budget, shall appoint necessary inspectors who shall be experienced in all branches of cosmetic art. The salaries for such inspectors shall be fixed by the State Personnel Department. The inspectors or agents so appointed shall perform such duties as may be prescribed by the Board. Any inspector appointed under authority of this section or any member of the Board shall have the authority at all reasonable hours to examine cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies or training schools with respect to and in compliance with the provisions of this Chapter. No member of the Board shall exercise this authority on a routine basis but shall do so at the direction of either the Board, the chairman, the executive secretary or the inspector assigned to the territory, such direction to be governed by a complaint or problem registered with the Board of Cosmetic Art office or when an inspector deems it necessary to call in a Board member. Reimbursement for per diem and travel is subject to these provisions. Prior to reimbursement, the requesting Board member must submit a detailed written report to the Board of Cosmetic Art office for the official file. The inspectors and agents appointed under authority of this Chapter shall make such reports to the Board of Cosmetic Art Examiners as said Board may require. The said Board shall, on or before June 1 of each year, submit a budget to the Director of the Budget for the ensuing fiscal year, which shall begin July first of each year. The said budget so submitted shall include all estimated receipts and expenditures for the ensuing fiscal year including the estimated compensation and expenses of Board members. The said budget shall be subject to the approval of the Director of the Budget and no expenditures shall be made unless the same shall have been set up in the budget adopted by the Board of Cosmetic Art Examiners, and approved by the Director of the Budget of the State of North Carolina; that all salaries and expenses in

connection with the administration of this Chapter shall be paid upon a warrant drawn on the State Treasurer.

The provisions of the Executive Budget Act and the Personnel Act shall fully apply to the administration of this Chapter.

The State Board shall report annually to the Governor a full statement of receipts and disbursements and also a full statement of its work during the year."

Sec. 3. G.S. 88-17 reads as rewritten:

"*§ 88-17. Regular and special meetings of Board; examinations.*

The Board of Cosmetic Art Examiners shall meet four times a year in the months of January, April, July and October on the first Tuesday in each of said months, for the purpose of transacting all business of the Board of Cosmetic Art Examiners and to conduct examinations of applicants for certificates of registration to practice as registered cosmetologists, and of applicants for certificates of registration to practice as registered apprentices, meetings to be held at such places as the Board may determine to be most convenient for such examinations; provided, however, that examinations are conducted at no less than three locations other than Raleigh, scattered geographically throughout the State of North ~~Carolina,~~ Carolina. ~~and the~~ The locations for examinations conducted outside of Raleigh shall be in publicly supported two-year post-secondary educational institutions with appropriate facilities. The Board shall, if requested by an institution, reimburse the institution for the use of its facilities in administering examinations. The examinations conducted for applicants for certificates of registration as registered cosmetologists and registered apprentices shall be open to all applicants, ~~and shall~~ include such practical demonstration and oral and written tests as the ~~said~~ Board may ~~determine~~ determine, and ~~the examinations conducted for applicants for certificates of registration as registered cosmetologists and registered apprentices shall~~ be administered by teachers or ~~instructors~~ instructors, other than Board members, qualified and approved by the ~~Board of Cosmetic Art Examiners.~~ Board. The Board shall, upon request, reimburse a teacher or instructor who administers an examination. ~~Examinations held in post-secondary educational institutions shall be supervised by not more than one member of the Board of Cosmetic Art and shall be administered by teachers or instructors, other than Board members, who are qualified and approved by the Board. Examinations held in Raleigh shall be administered by the minimum number of Board members required to conduct such examinations and the chairman of the Board is authorized and empowered to make the decision, based on the number of applicants scheduled for examination, and to appoint such Board members to conduct the scheduled examinations.~~ The

chairman of the Board is hereby authorized and empowered to call a meeting of said Board whenever necessary, said meetings to be in addition to the quarterly meetings hereinbefore provided for. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chairman of the Board. No payment for expenses incurred in the administration of examinations of applicants for certificates of registration as registered cosmetologists or registered apprentices at post-secondary educational institutions shall be authorized other than the cost of examination materials, rental of the examination facility, grading of the examination, and reimbursement of teachers or instructors who administer the examinations."

Sec. 4. The Board of Cosmetic Art Examiners shall report to the General Assembly no later than November 1, 1990, on the Board's per diem and travel expenses for the period July 1, 1989, to October 1, 1990. The report shall include information on the number and location of examinations, the number of applicants scheduled and actually examined at each examination, the travel and per diem paid to each Board member together with a description of the official business conducted for each day of per diem claimed or paid and the results of the Board's efforts to comply with Recommendation Three in the April 1989 Special Review of the North Carolina State Board of Cosmetic Art by the Office of the State Auditor. A copy of the report shall be submitted to the Director of the Fiscal Research Division of the General Assembly.

Sec. 5. This act is effective upon ratification and shall apply to the first appointment made by the Governor other than appointment of the public member following the date of ratification and to examinations, Board business, and Board meetings conducted on or after the date of ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

H.B. 898 **CHAPTER 651**

AN ACT AUTHORIZING ALAMANCE AND ROCKINGHAM COUNTIES TO REGULATE TRESPASSING TO HUNT OR FISH ON PRIVATE LANDS BY LOCAL ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. A county may adopt ordinances to regulate the entering of private lands in that county to hunt or fish, or with the intent to hunt or fish. These ordinances may provide for the written permission of the owner or lessee of land before entering the land to

hunt or fish or with the intent to hunt or fish. The act of granting written permission pursuant to such an ordinance shall not, of itself, subject the owner or lessee to the increased duty owed to an invitee or licensee under principles of the common law. It is unlawful for any person to hunt or fish on private land or to enter private land with the intent to hunt or fish in violation of an ordinance adopted pursuant to this act, and such an ordinance shall be enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 2. This act applies only to Alamance and Rockingham Counties.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

H.B. 957 **CHAPTER 652**

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS AND THE REGULATION OF UNDERGROUND STORAGE TANKS AND TO PROVIDE FOR COMPLIANCE WITH ENVIRONMENTAL LAWS BY FIDUCIARIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.3(a)(15) reads as rewritten:

"(15) ~~To implement programs to prevent pollution from underground tanks containing oil or hazardous substances, in accordance with those requirements made mandatory upon approved State programs by federal agencies administering the Resource Conservation and Recovery Act, as amended, including the Hazardous and Solid Waste Amendments of 1984.~~ To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations."

Sec. 2. G.S. 143B-282(2) reads as rewritten:

"(2) The Environmental Management Commission shall ~~have the power and duty to establish standards and~~ adopt ~~rules and regulations:~~ rules:

a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107;

b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215;

c. To implement water and air quality reporting pursuant to G.S. 143-215.68;

d. To be applied in capacity use areas pursuant to G.S. 143-215.14;

e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.20;

f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25, 1983;

g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.

h. ~~For governing the registration, construction, installation, monitoring, repair, closure, financial responsibility, and leaks of~~ Governing underground tanks used for the storage of hazardous substances or oil pursuant to Article 21 or Article 21A of Chapter 143 of the General Statutes."

Sec. 3. G.S. 143-215.94A reads as rewritten:

"*§ 143-215.94A. Definitions.*

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) 'Commercial Fund' means the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.

(2) 'Commercial underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term 'commercial underground storage tank' does not include any:

a. Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

b. Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

c. Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households;
d. Septic tank;
e. Pipeline facility (including gathering lines) regulated under:
   1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 *et seq.*);
   2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 *et seq.*); or
   3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
f. Surface impoundment, pit, pond, or lagoon;
g. Stormwater or wastewater collection system;
h. Flow-through process tank;
i. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
j. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(2a) 'Heating oil' means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these fuel oils for the purpose of heating.

(3) 'Noncommercial Fund' means the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.

(4) 'Noncommercial underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term 'noncommercial storage tank' does not include any:
a. Commercial underground storage tanks;
b. Septic tank;

c. Pipeline facility (including gathering lines) regulated under:
   1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 *et seq.*);
   2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 *et seq.*); or
   3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

d. Surface impoundment, pit, pond, or lagoon;

e. Stormwater or wastewater collection system;

f. Flow-through process tank;

g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

h. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(5) 'Operator' means any person in control of, or having responsibility for, the operation of an underground storage tank.

(6) 'Owner' means:

a. In the case of an underground storage tank in use on 8 November 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of petroleum products; and

b. In the case of an underground storage tank in use before 8 November 1984, but no longer in use on or after that date, any person who owned such tank immediately before the discontinuation of its use.

(7) 'Petroleum' or 'petroleum product' means crude oil or any fraction thereof which is a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), including any such liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel. The terms 'petroleum' and 'petroleum product' do not include any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as amended; any substance regulated as a hazardous waste under Subtitle C of Title II

of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 *et seq.*, as amended; or any mixture of petroleum or a petroleum product containing any such hazardous substance or hazardous waste in greater than *de minimis* quantities."

Sec. 4. G.S. 143-215.94B reads as rewritten:

"*§ 143-215.94B. Commercial leaking petroleum underground storage tank cleanup fund.*

(a) There is established under the control and direction of the Department the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Commercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, other monies paid to it or recovered on behalf of the Commercial Fund, and fees paid pursuant to this Part.

(b) The Commercial Fund shall be used for the payment of the following costs ~~in excess of one hundred thousand dollars ($100,000)~~ up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

(1) The cleanup of environmental damage as required by G.S. ~~143-215.94E(a); and~~ 143-215.94E(a) in excess of fifty thousand dollars ($50,000) per occurrence; and

(2) ~~The least expensive of the following:~~

~~a. Providing potable water supplies including bottled water, well-head filtration systems or other suitable alternatives to persons whose water supply has been rendered unpotable; or~~

~~b. Purchasing the property of the person whose water supply has been rendered unpotable. The State shall not purchase the property without the consent of the property owner, but if the property owner fails to consent, the amount expended to provide potable water shall not exceed the value of the property. If the property is purchased by the State, the purchase price shall be the value of the property immediately prior to the discovery of the discharge or release.~~

Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence.

~~In no event shall a property owner be paid any sum as liquidated damages from the Commercial Fund.~~

(c) The Commercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks

owned or operated by the same owner or operator. ~~Up to a maximum of one hundred thousand dollars ($100,000) per year may be used from the Fund to pay for the administrative costs associated with carrying out the provisions of this Part by the Department.~~

(d) The Commercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or ~~fitting.~~ fitting not connected to an underground storage tank, or vehicle;

(2) The replacement of any tank, pipe, fitting or related equipment;

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline;

(4) Costs intended to be paid by the Noncommercial Fund; or

(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.

(e) The Commercial Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3."

Sec. 5. G.S. 143-215.94C reads as rewritten:

"*§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.*

(a) The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee according to the following schedule:

(1) For each petroleum commercial underground storage tank ~~currently in operation~~ of 3,500 gallons or less capacity -- ~~thirty dollars ($30.00).~~ forty-five dollars ($45.00).

(2) For each petroleum commercial underground storage tank ~~currently in operation~~ of more than 3,500 gallon capacity -- ~~sixty dollars ($60.00).~~ seventy-five dollars ($75.00).

(b) ~~The operating fee shall be due and payable on 1 January of each year for that calendar year.~~ The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For petroleum commercial underground storage tanks which are first placed in use in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. The annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the

total amount of fees to be collected by the Department is approximately the same each month. A person who owns or operates more than one commercial petroleum underground storage tank may request that the fee for all tanks be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter.

(c) Beginning no later than sixty days before the first due date of the annual operating fee imposed by this section, any person who deposits a petroleum product in a commercial underground storage tank that would be subject to the annual operating fee shall, at least once in each calendar year during which such deposit of a petroleum product is made, notify the owner or operator of the duty to pay the annual operating fee. The requirement to notify pursuant to this subsection does not constitute a duty owed by the person depositing a petroleum product in a commercial underground storage tank to the owner or operator and the person depositing a petroleum product in an underground storage tank shall not incur any liability to the owner or operator for failure to give notice of the duty to pay the operating fee.

(d) If, on 1 July in any year ~~after 1990~~ the Commercial Fund balance exceeds fifteen million dollars ($15,000,000), the requirement to pay an annual operating fee pursuant to this section shall be suspended for any calendar year thereafter until the Commercial Fund balance is five million dollars ($5,000,000) or less, at which time the requirement to pay the annual operating fee shall be reinstated beginning with the next calendar year. ~~The duty to pay the annual operating fee shall not be suspended prior to 1 January 1991 regardless of the Commercial Fund balance.~~ A suspension of the requirement to pay an annual operating fee for any calendar year shall not be construed to relieve any person of the obligation to pay the full amount of annual operating fees due under this section for any other year."

Sec. 6. G.S. 143-215.94D reads as rewritten:

"*§ 143-215.94D. Noncommercial leaking petroleum underground storage tank cleanup fund.*

(a) There is established under the control and direction of the Department the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Noncommercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, or other monies paid to it or recovered on behalf of the Noncommercial Fund.

(b) The Noncommercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars

($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from: (i) noncommercial underground storage tanks, (ii) commercial underground storage tanks where the owner or operator cannot be identified or fails to proceed with the cleanup, and (iii) commercial underground storage tanks which were taken out of operation prior to 1 January 1974 where, at the time the discharge or release is discovered, neither the owner or operator owns or leases the lands on which the tank is located:

(1) The cleanup of environmental damage as required by G.S. 143-215.94E(a); and

(2) ~~The least expensive of the following:~~

~~a. Providing potable water supplies including bottled water, well-head filtration systems or other suitable alternatives to persons whose water supply has been rendered unpotable; or~~

~~b. Purchasing the property of the person whose water supply has been rendered unpotable. The State shall not purchase the property without the consent of the property owner, but if the property owner fails to consent, the amount expended to provide potable water shall not exceed the value of the property. If the property is purchased by the State, the purchase price shall be the value of the property immediately prior to the discovery of the discharge or release.~~

Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence.

~~In no event shall a property owner be paid any sum as liquidated damages from the Noncommercial Fund.~~

(c) The Noncommercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator. ~~Up to a maximum of one hundred thousand dollars ($100,000) per year may be used from the Fund to pay for the administrative costs associated with carrying out the provisions of this Part by the Department.~~

(d) The Noncommercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or ~~fitting.~~ fitting not connected to an underground storage tank, or vehicle;

(2) The replacement of any tank, pipe, fitting or related equipment;

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline;

(4) Costs intended to be paid for by the Commercial Fund; or

(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.

(e) The Noncommercial Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3."

Sec. 7. G.S. 143-215.94E(b) reads as rewritten:

"(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in G.S. 143-215.94B(b) which exceed ~~one hundred thousand dollars ($100,000) up to a maximum of nine hundred thousand dollars ($900,000).~~ fifty thousand dollars ($50,000) for the cleanup of environmental damage and one hundred thousand dollars ($100,000) for compensating third parties for bodily injury and property damage up to an aggregate maximum of one million dollars ($1,000,000) per discharge or release. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or release."

Sec. 8. G.S. 143-215.94F reads as rewritten:

"§ *143-215.94F. Limited amnesty.*

Any owner or operator who reports a suspected discharge or release from an underground storage tank ~~within 15 months of the effective date of this Part~~ prior to 1 October 1989 shall not be liable for any civil penalty that might otherwise be imposed pursuant to ~~G.S. 143-215.91(a),~~ G.S. 143-215.91(a) for violations of G.S. 143-215.83(a) and G.S. 143-215.85. The limited amnesty provided by this section shall not apply upon a finding by the Commission that the discharge or release was the result of gross negligence or an intentional act."

Sec. 9. G.S. 143-215.94G reads as rewritten:

"§ *143-215.94G. Authority of the Department to engage in cleanups; actions for fund reimbursement.*

(a) Whenever a discharge or release of petroleum is from:

(1) A noncommercial underground storage tank;

(2) An underground storage tank where the owner or operator cannot be identified or located;

(3) An underground storage tank where the owner or operator fails to proceed as required by G.S. 143-215.94E(a); or

(4) A commercial underground storage tank which was taken out of operation prior to 1 January 1974 where, at the time the discharge or release is discovered, neither the owner or

operator owns or leases the land on which the underground storage tank is located;

the Department is authorized and empowered to use staff, equipment, or materials under its control or provided by other cooperating federal, State, or local agencies and to contract with any agent or contractor it deems appropriate to develop and implement a cleanup plan and to pay the costs authorized by G.S. 143-215.94D(b) from the Noncommercial Fund. Every State agency shall provide to the Department to the maximum extent feasible such staff, equipment, and materials as may be available and useful to the development and implementation of a cleanup program.

(b) Whenever the discharge or release of a petroleum product is from a commercial underground storage tank, the Department is authorized and empowered to supervise the cleanup of environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects to have the Commercial Fund reimburse or pay for any costs allowed under ~~G.S. 143-215.94B(b) in excess of one hundred thousand dollars ($100,000).~~ G.S. 143-215.94B(b), the Department shall require the owner or operator to submit documentation of all expenditures which are claimed for the purposes of establishing that the owner or operator has spent ~~an initial one hundred thousand dollars ($100,000).~~ the amounts required to be paid by the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The Department shall allow credit for all expenditures for which prior approval was obtained from the Department and any other expenditures which the Department determines to be reasonable and necessary. The Department may not pay for any costs for which the Commercial Fund was established until the owner or operator has paid ~~an initial one hundred thousand dollars ($100,000).~~ the amounts specified in G.S. 143-215.94E(b).

(c) The Secretary shall keep a record of all expenses incurred for the services of State personnel and for the use of the State's equipment and material.

(d) The Secretary shall seek reimbursement through any legal means available, for:

(1) Any costs not authorized to be paid from either the Commercial or the Noncommercial Fund;

(2) The ~~initial one hundred thousand dollars ($100,000) of the costs~~ amounts provided for in G.S. 143-215.94B(b) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank is later identified or located;

(3) The ~~initial one hundred thousand dollars ($100,000) of the costs~~ amounts provided for in G.S. 143-215.94B(b) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank failed to proceed as required by G.S. 143-215.94E(a);

(4) Any funds due under G.S. 143-215.94E(g); and

(5) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks.

(e) In the event that a civil action is commenced to secure reimbursement pursuant to subdivisions (1) through (4) of subsection (d) of this section, the Secretary may recover, in addition to any amount due, the costs of the action, including but not limited to reasonable attorney's fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the appropriate fund or other source from which the expenditures were made.

(f) In the event that ~~one hundred thousand dollars ($100,000) or more~~ a recovery equal to or in excess of the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered pursuant to subdivisions (2) and (3) of subsection (d) of this section for the costs described in G.S. 143-215.94B(b), the Department shall transfer funds from the Commercial Fund that would have been paid from the Commercial Fund pursuant to G.S. 143-215.94B(b) if the owner or operator had proceeded with the cleanup, but which were paid from the Noncommercial Fund, into the Noncommercial Fund."

Sec. 10. G.S. 143-215.94H reads as rewritten:

"§ *143-215.94H. Financial responsibility.*

The Department shall require each owner and operator of a petroleum underground storage tank who is required to demonstrate financial responsibility under rules promulgated by the United States Environmental Protection Agency pursuant to 42 U.S.C. § 6991b(d) to maintain evidence of financial responsibility of not less than ~~one hundred thousand dollars ($100,000)~~ the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) per occurrence for costs described in G.S. 143-215.94B(b) and G.S. 143-215.94D(b). Financial responsibility may be established in accordance with rules adopted by the Commission which shall provide that financial responsibility may be established by either insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer, or any combination thereof. The compliance date schedule for

demonstrating financial responsibility shall conform to the schedule adopted by the Environmental Protection Agency."

Sec. 11. G.S. 143-215.94I(j) reads as rewritten:

"(j) In the event that the Commissioner finds that a pool is insolvent, financially impaired, or otherwise, unable to discharge its legal liabilities or obligations, ~~of it~~ or if the Commissioner at any time has reason to believe that any owner or operator is unable to demonstrate financial responsibility as required by G.S. 143-215.94H and rules adopted by the Commission as a result of the financial condition of the pool or for any other reason, the Commissioner shall so notify the Secretary."

Sec. 12. G.S.143-215.94M(b) reads as rewritten:

"(b) The annual reports required by this section shall be made by the Secretary ~~beginning with the next legislative session following the effective date of this Part.~~ on 1 January of each year beginning 1 January 1990."

Sec. 13. Part 2A of Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.94N. Applicability.*

(a) The provisions of this Part as they relate to costs paid for by the Commercial Fund apply only to discharges or releases which are discovered or reported on or after 30 June 1988.

(b) The provisions of this Part as they relate to costs paid for by the Noncommercial Fund apply to discharges or releases without regard to the date discovered or reported; however, costs sought pursuant to G.S. 143-215.94G(d) (1), (2), (3), and (4) shall be for the full amount of the costs paid for from the Noncommercial Fund and shall not be limited pursuant to G.S. 143-215.94E(b) for discharges or releases from commercial underground storage tanks discovered or reported on or before 30 June 1988."

Sec. 14. Article 21A of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 2B. Underground Storage Tank Regulation.

"*§ 143-215.94T. Adoption and implementation of regulatory program.*

The Commission shall adopt, and the Department shall implement and enforce, rules relating to underground storage tanks as provided by G.S. 143-215.3(a)(15) and G.S. 143B-282(2)h. Such rules shall include standards and requirements applicable to both existing and new underground storage tanks and tank systems, may include different standards and requirements based on tank capacity, tank location, tank age, and other relevant factors, and shall include, at a minimum, standards and requirements for:

(1) Design, construction, and installation, including monitoring systems;

(2) Notification to the Department, inspection, and registration;
(3) Recordation of tank location;
(4) Modification, retrofitting, and upgrading;
(5) General operating requirements;
(6) Release detection;
(7) Release reporting, investigation, and confirmation;
(8) Corrective action;
(9) Repair;
(10) Closure; and
(11) Financial responsibility."

Sec. 15. Section 4 of Chapter 1035 of the 1987 Session Laws (1988 Regular Session) is repealed.

Sec. 16. Section 5 of Chapter 1035 of the 1987 Session Laws reads as rewritten:

"Sec. 5. G.S. 143-215.94B through G.S. 143-215.94E, G.S. 143-215.94G, and G.S. 143-215.94J through G.S. ~~143-215.94M~~ 143-215.94N as enacted by Section 1 of this act and Section 2 of this act expire 31 December ~~1989.~~ 1998. References to expired sections in unexpired sections shall be read to give effect to the unexpired sections. If either fund created by Section 1 of this act would be obligated under the provisions of this act with respect to any discharge or release reported to the Department of Natural Resources and Community Development or any successor department prior to the expiration of this act, the respective fund may continue to pay any costs incurred in accordance with this act to the extent that funds remain. In the event that funds remain in either fund after the expiration of this act and after all claims and other obligations of both funds have been paid, such remaining funds shall revert to the General Fund."

Sec. 17. All sums collected on kerosene and motor fuel pursuant to G.S. 119-18 that are not allotted by the Office of State Budget and Management to administer and enforce the provisions of Chapter 119 of the General Statutes shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Underground Petroleum Storage Tank Cleanup Fund as certified on a monthly basis as follows: one-half (½) shall be credited to the Commercial Fund and one-half (½) shall be credited to the Noncommercial Fund unless the balance in the Commercial Fund exceeds fifteen million dollars ($15,000,000), and in that event, all such funds shall be credited to the Noncommercial Fund until the balance of the Commercial Fund falls below five million dollars ($5,000,000), at which time credits to the Commercial Fund shall resume.

Sec. 18. The requirement to pay the annual operating fee under G.S. 143-215.94C shall not be suspended prior to 1 January 1991 regardless of the Commercial Fund balance.

Sec. 19. There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Natural Resources and Community Development the sum of $600,000 for the 1989-90 fiscal year and $600,000 for the 1990-91 fiscal year to implement the provisions of Parts 2A and 2B of Chapter 143 of the General Statutes. There is appropriated from the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Natural Resources and Community Development the sum of $600,000 for the 1989-90 fiscal year and $600,000 for the 1990-91 fiscal year to implement the provisions of Parts 2A and 2B of Chapter 143 of the General Statutes.

Sec. 20. G.S. 32-27 is amended by adding a new subsection to read:

"(8.1) Comply with environmental law.

a. To inspect property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting such property and to respond to any actual or threatened violation of any environmental law affecting property held by the fiduciary;

b. To take, on behalf of the estate or trust, any action necessary to prevent, abate, or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

c. To refuse to accept property in trust if the fiduciary determines that any property to be donated to the trust either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving hazardous substance which could result in liability to the trust or otherwise impair the value of the assets held therein;

d. To settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;

e. To disclaim any power granted by any document, statute, or rule of law which, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law;

f. To decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.

g. For purposes of this subsection 'environmental law' means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health. For purposes of this subsection, 'hazardous substances' means any substance defined as hazardous or toxic or otherwise regulated by any environmental law. The fiduciary shall be entitled to charge the cost of any inspection, review, abatement, response, cleanup, or remedial action authorized herein against the income or principal of the trust or estate. A fiduciary shall not be personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under such law. Neither the acceptance by the fiduciary of property or a failure by the fiduciary to inspect property shall be deemed to create any inference as to whether or not there is or may be any liability under any environmental law with respect to such property."

Sec. 21. Section 5 of this act shall become effective 1 January 1990. Section 19 of this act shall become effective 1 July 1989. Sections 1 through 4, Sections 6 through 18, and Sections 20 and 21 of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

H.B. 981 **CHAPTER 653**

AN ACT TO PROVIDE THAT PERSONS WHO ERECT MANUFACTURED MODULAR STRUCTURES EITHER HAVE

A VALID CONTRACTORS' LICENSE OR COMPLY WITH RULES OF THE BUILDING CODE COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-1 reads as rewritten:

"*§ 87-1. 'General contractor' defined; exceptions.*

For the purpose of this Article any person or firm or corporation who for a fixed price, commission, fee or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is forty-five thousand dollars ($45,000) or more, or undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code, shall be deemed to be a 'general contractor' engaged in the business of general contracting in the State of North Carolina.

This section shall not apply to persons or firms or corporations furnishing or erecting industrial equipment, power plant equipment, radial brick chimneys, and monuments.

This section shall not apply to any person or firm or corporation who constructs a building on land owned by that person, firm or corporation when such building is intended for use by that person, firm or corporation after completion."

Sec. 2. G.S. 143-139.1 reads as rewritten:

"*§ 143-139.1. Certification of manufactured buildings, structures or components by recognized independent testing laboratory.*

The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such reasonable and appropriate rules and regulations as it deems necessary for

approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent and free of any potential conflicts of interest which might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code.

The Building Code Council may also adopt rules to insure that any person that is not licensed, in accordance with G.S. 87-1, and that undertakes to erect a North Carolina labeled manufactured modular building, meets the manufacturer's installation instructions and applicable provisions of the State Building Code. Any such person, before securing a permit to erect a modular building, shall provide the code enforcement official proof that he has in force for each modular building to be erected a $5,000 surety bond insuring compliance with the regulations of the State Building Code governing installation of modular buildings."

Sec. 3. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

H.B. 1025 **CHAPTER 654**

AN ACT TO AMEND THE NATURAL AND SCENIC RIVERS ACT TO AUTHORIZE THE DIVISION OF PARKS AND RECREATION TO ACQUIRE LANDS IN FEE SIMPLE AT THE NEW RIVER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-35 reads as rewritten:

"§ *113A-35. Criteria for system.*

For the inclusion of any river or segment of river in the natural and scenic river system, the following criteria must be present:

(1) River segment length -- must be no less than one mile.

(2) Boundaries -- of the system shall be the visual horizon or such distance from each shoreline as may be determined to be necessary by the Secretary, but shall not be less than 20 feet. ~~Provided, that this shall not be construed to authorize the Secretary to acquire, except by donation or gift, more than 320 acres of land per mile for inclusion within the boundaries.~~

(3) Water quality -- shall not be less than that required for Class 'C' waters as established by the North Carolina Environmental Management Commission.

(4) Water flow -- shall be sufficient to assure a continuous flow and shall not be subjected to withdrawal or regulation to the extent of substantially altering the natural ecology of the stream.

(5) Public access -- shall be limited, but may be permitted to the extent deemed proper by the Secretary, and in keeping with the property interest acquired by the Department and the purpose of this Article."

Sec. 2. G.S. 113A-35.1 reads as rewritten:

"*§ 113A-35.1. Components of system; management plan; acquisition of land and easements; inclusion in national system.*

That segment of the south fork of the New River extending from its confluence with Dog Creek in Ashe County downstream through Ashe and Alleghany Counties to its confluence with the north fork of the New River and the main fork of the New River in Ashe and Alleghany Counties downstream to the Virginia State line shall be a scenic river area and shall be included in the North Carolina Natural and Scenic Rivers System.

The Department shall prepare a management plan for said river section. This management plan shall recognize and provide for the protection of the existing undeveloped scenic and pastoral features of the river. Furthermore, it shall specifically provide for continued use of the lands adjacent to the river for normal agricultural activities, including, but not limited to, cultivation of crops, raising of cattle, growing of trees and other practices necessary to such agricultural pursuits.

For purposes of implementing this section and the management plan, the Department is ~~empowered~~ authorized to acquire ~~in fee simple~~ lands or interests in lands not ~~more than 700~~ to exceed 2,200 acres, ~~the computation of which shall not include lands received by donation, and~~ to acquire such lands in fee simple or to acquire such interests in lands as easements, to provide for protection of scenic values as described in G.S. ~~113A-38~~ 113A-38, and to provide for public ~~access, in as many as 1,500 acres.~~ access. Easements obtained for the purpose of implementing this section and the management plan shall not abridge the water rights being exercised on May 26, 1975.

Should the Governor seek inclusion of the said river segment in the National System of Wild and Scenic Rivers by action of the Secretary of Interior, such inclusion shall be at no cost to the federal government, as prescribed in the National Wild and Scenic Rivers Act, and therefore shall be under the terms described in this section of

the North Carolina Wild and Scenic Rivers Act and in the management plan developed pursuant thereto."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

H.B. 1036 **CHAPTER 655**

AN ACT TO CLARIFY THAT MEDICAL AND HEALTH CARE PROVIDERS WHO VOLUNTARILY PROVIDE EMERGENCY TREATMENT AT LOCAL HEALTH DEPARTMENT FACILITIES AND NON-PROFIT COMMUNITY HEALTH CENTERS ARE UNDER THE GOOD SAMARITAN STATUTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-21.14 reads as rewritten:

"*§ 90-21.14. First aid or emergency treatment; liability limitation.*

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a non-profit community health center or a volunteer member of a rescue ~~squad~~ squad, who receives no compensation for his services as an emergency medical care provider, who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

(1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and

(2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person, shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his business or profession. Services provided by a medical or health care provider who receives no compensation for his services and who voluntarily renders treatment at facilities of local health departments as defined in

G.S. 130A-2 or at a non-profit community health center, are deemed not to be in the normal and ordinary course of the volunteer medical or health care provider's business or profession.

(c) In the event of any conflict between the provisions of this section and those of G.S. 20-166(d), the provisions of G.S. 20-166(d) shall control and continue in full force and effect."

Sec. 2. This act shall become effective September 1, 1989, and shall apply to volunteer emergency health care services provided on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

S.B. 977 **CHAPTER 656**

AN ACT TO PROTECT NORTH CAROLINA COASTAL RESOURCES FROM POTENTIAL ADVERSE IMPACTS OF OFFSHORE OIL AND GAS ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.77 reads as rewritten:

"§ *143-215.77. Definitions.*

As used in this Article, unless the context otherwise requires:

(1) 'Barrel' shall mean 42 U.S. gallons at 60 degrees Fahrenheit.

(2) 'Commission' means the North Carolina Environmental Management Commission.

(3) 'Secretary' shall mean the North Carolina Secretary of Natural Resources and Community Development.

(4) 'Discharge' shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil or other hazardous substances into ~~waters.~~ waters of the State or into waters outside the territorial limits of the State which affect lands, waters or uses related thereto within the territorial limits of the State, or upon land in such proximity to waters that oil or other hazardous substances is reasonably likely to reach the waters, but shall not include amounts less than quantities which may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A; provided, however, that this Article shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil or other hazardous substances, oil-based products, or chemicals on the land or waters by any State, county, or

municipal government agency in any program of mosquito or other pest control, or their use by any person in accepted agricultural, horticultural, or forestry practices, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge; provided, further, that the use of a pesticide regulated by the North Carolina Pesticide Board in a manner consistent with the labelling required by the North Carolina Pesticide Law shall not constitute a 'discharge' for purposes of this Article. The word 'discharge' shall also include any discharge upon land, whether or not in proximity to waters, which is intentional, knowing or willful.

(5) 'Having control over oil or other hazardous substances' shall mean, but shall not be limited to, any person, using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such oil or other hazardous substances onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil or other hazardous substances.

(5a) 'Hazardous substance' shall mean any substance, other than oil, which when discharged in any quantity may present an imminent and substantial danger to the public health or welfare, as designated pursuant to G.S. 143-215.77A.

(6) Repealed by Session Laws 1979, c. 981, s. 5.

(7) 'Department' shall mean the Department of Natural Resources and Community Development.

(8) 'Oil' shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.

(9) 'Bailee' shall mean any person who accepts oil or other hazardous substances to hold in trust for another for a special purpose and for a limited period of time.

(10) 'Carrier' shall mean any person who engages in the transportation of oil or other hazardous substances for compensation.

(11) 'Oil terminal facility' shall mean any facility of any kind and related appurtenances located in, on or under the

surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A vessel shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another vessel to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or is used to store oil.

(12) 'Operator' shall mean any person owning or operating an oil terminal facility or pipeline, whether by lease, contract, or any other form of agreement.

(13) 'Person' shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(14) 'Pipeline' shall mean any conduit, pipe or system of pipes, and any appurtenances related thereto and used in conjunction therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.

(15) 'Restoration' or 'restore' shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil or other hazardous substances discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.

(16) 'Transfer' shall mean the transportation, on-loading or off-loading of oil or other hazardous substances between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.

(17) 'Vessel' shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and shall include, but shall not be limited to, barges and tugs; provided that the term 'vessel' as used herein shall not apply to any pleasure, sport or commercial fishing vessel which has a fuel capacity of less than 500

gallons and is not used to transport petroleum, petroleum products, or general cargo.

(18) 'Waters' shall mean any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, ~~waterway~~ waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction."

Sec. 2. G.S. 143-215.84 reads as rewritten:

"*§ 143-215.84. Removal of prohibited discharges.*

(a) Person Discharging. -- Any person having control over oil or other hazardous substances discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Commission.

(b) Removal by Department. -- Notwithstanding the requirements of subsection (a) of this section, the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil or other hazardous substances discharged onto the land or into the waters of the State and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 *et seq.*

~~(c) The Secretary of the Department of Transportation is authorized and empowered, after consultation with the Secretary [of Natural Resources and Community Development] to purchase and equip a~~

~~sufficient number of trucks designed to carry out the provisions of subsection (b). These trucks shall be maintained by the Department of Transportation and shall be strategically located at various locations throughout the State so as to furnish a ready response when word of an oil or other hazardous substances discharge has been received. The Secretary [of the Department of Natural Resources and Community Development] or his designee will, after consultation, decide where the trucks are to be located.~~

~~(d) The Secretary of the Department of Transportation and the Secretary [of the Department of Natural Resources and Community Development] or their designees shall adopt rules for the placement of these trucks and shall determine the manner and way in which they are to be used. The Secretary [of the Department of Natural Resources and Community Development] shall reimburse the Department of Transportation for expenses incurred by the Department of Transportation during cleanups as provided in G.S. 143-215.88.~~"

Sec. 3. G.S. 143-215.86 reads as rewritten:

"§ *143-215.86. Other State agencies and State-designated local agencies.*

(a) ~~Cooperative Effort. -- The Board of Transportation, the North Carolina Wildlife Resources Commission, and any other agency of this State and any local agency designated by the State shall cooperate with and lend assistance to the Commission by assigning to the Commission upon its request personnel, equipment and material to be utilized in any project or activity related to the containment, collection, dispersal or removal of oil or other hazardous substances discharged upon the land or into the waters of this State.~~

~~(b)~~ Planning. -- ~~Subsequent to May 16, 1973, and prior to September 1, 1973,~~ The State Emergency Response Commission shall be responsible for developing a program, including training, for the waters of the State, including offshore marine waters, to enable the State to respond to an emergency oil or other hazardous substances spillage. In carrying out its duties under this section, designated representatives of the ~~Commission,~~ State Emergency Response Commission, the Board of Transportation, ~~and~~ the Wildlife Resources ~~Commission~~ Commission, the Environmental Management Commission, the Division of Marine Fisheries, the Outer Continental Shelf Lands Office of the Department of Administration, and any other agency or agencies of the State which the ~~Commission~~ State Emergency Response Commission shall deem necessary and appropriate, shall confer and establish plans and procedures for the assignment and utilization of personnel, equipment and material to be used in carrying out the purposes of this Part. Every State agency

involved is authorized to adopt such rules as shall be necessary to effectuate the purposes of this section.

~~(c) Accounts. -- Every State agency or other State-designated local agency participating in the containment, collection, dispersal or removal of an oil or other hazardous substances discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the Commission upon completion of the project or activity.~~

(b) Cooperative Effort. -- The Board of Transportation, the North Carolina Wildlife Resources Commission, the Division of Marine Fisheries, and any other agency of this State and any local agency designated by the State shall cooperate with and lend assistance to the Commission by assigning to the Commission upon its request personnel, equipment, and material to be utilized in any project or activity related to the containment, collection, dispersal, or removal of oil or other hazardous substances discharged upon the land or discharged into waters affecting this State.

(c) Trucks. -- The Secretary of the Department of Transportation may, after consultation with the Secretary of Natural Resources and Community Development, purchase and equip a sufficient number of trucks designed to carry out the provisions of subsection (b) of this section. These trucks shall be maintained by the Department of Transportation and shall be strategically located at various locations throughout the State so as to furnish a ready response when word of an oil or other hazardous substances discharge has been received. The Secretary of the Department of Natural Resources and Community Development or his designee will, after consultation, decide where the trucks are to be located.

(d) Rules. -- The Secretary of the Department of Transportation and the Secretary of the Department of Natural Resources and Community Development or their designees shall adopt rules for the placement of these trucks and shall determine the manner and way in which they are to be used. The Secretary of the Department of Natural Resources and Community Development shall reimburse the Department of Transportation for expenses incurred by the Department of Transportation during cleanups as provided in G.S. 143-215.88.

(e) Accounts. -- Every State agency or other State-designated local agency participating in the containment, collection, dispersal, or removal of an oil or other hazardous substances discharge or in restoration necessitated by such discharge, shall keep a record of all

expenses incurred in carrying out any such project or activity including the actual services performed by the agency's personnel and the use of the agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the Commission upon completion of the project or activity."

Sec. 4. G.S. 143-215.87 reads as rewritten:

"*§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.*

There is hereby established under the control and direction of the Department an Oil or Other Hazardous Substances Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil or other hazardous substances discharged to the land or waters of this ~~State~~ State, or discharged into waters outside the territorial limits of the State which affect land and waters or related uses within the State, or for restoration necessitated by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, penalties or other moneys paid to or recovered by or on behalf of the Department under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, penalties or other payments as damages authorized by this Part shall be paid to the Oil or Other Hazardous Substances Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. Within the meaning of this section, the word 'penalties' means civil penalties and does not include criminal fines or penalties."

Sec. 5. A new Part is added to Article 21A of Chapter 143 of the General Statutes to read as follows:

"Part 2B. Offshore Oil and Gas Activities.

"Adverse Environmental Impact Protection.

"*§ 143-215.94N. Declaration of public policy.*

The General Assembly hereby finds and declares as follows:

(1) The traditional uses of the seacoast of the State are public and private recreation, commercial and sports fishing, and habitat for natural resources;

(2) The preservation of these uses is a matter of the highest urgency and priority, and such uses can only be preserved effectively by maintaining and enhancing the existing condition of the coastal waters, estuaries, wetlands, tidal flats, beaches, and public lands adjoining the seacoast;

(3) The coastal economy, including access to the coast of the State, depends, either directly or indirectly, upon a ready and continuous reserve of petroleum products and by-products, including that portion of the supply resulting from oil and gas activities on the Outer Continental Shelf;

(4) Offshore oil and natural gas exploration, production, processing, recovery, and transportation pose increased potential for damage to the State's coastal environment, to the traditional uses of the area, and to the beauty of the North Carolina coast;

(5) Spills, discharges, and escapes of pollutants occurring as a result of procedures involving offshore oil and natural gas related activities have occurred in the past, and future threats of potentially catastrophic proportions from such activities require adoption of this Part as mitigation against such events;

(6) The economic burdens imposed by the General Assembly upon those engaged in the offshore exploration, production, processing, recovery , and transportation of oil and natural gas are reasonable and necessary in light of the traditional uses and interests herein protected, which are expressly declared to be of grave public interest and concern to the State in promoting its general interest and welfare promoting the public health, preventing diseases, and providing for the public safety.

"*§ 143-215.94O. Definitions.*

In addition to the definitions set out in G.S. 143-215.77, as used in this Part, the following definitions shall apply:

(1) 'Damages' are damages for any of the following:

a. Injury or harm to real or personal property, which includes the cost of restoring, repairing, or replacing any real or personal property damaged or destroyed by a discharge under this section, any income lost from the time such property is damaged to the time such property is restored, repaired, or replaced, and any reduction in value of such property caused by such discharge by comparison with its value prior thereto.

b. Business loss, including loss of income or impairment of earning capacity due to damage to real or personal property or to damage or destruction of natural resources upon which such income or earning capacity is reasonably dependent.

c. Interest on loans obtained or other financial obligations incurred by an injured party for the purpose of

ameliorating the adverse effects of a discharge pending the payment of a claim in full as provided by this Article.

d. Costs of cleanup, removal, or treatment of natural gas, oil, or drilling waste discharges.

e. Costs of restoration, rehabilitation, and, where possible, replacement of wildlife or other natural resources damaged as a result of a discharge.

f. When the injured party is the State or one of its political subdivisions, in addition to any injury described in subparagraphs (a) to (e), inclusive, damages include all of the following:

1. Injury to natural resources or wildlife, including recreational or commercial fisheries, and loss of use and enjoyment of public beaches and other public resources or facilities within the jurisdiction of the State or one of its political subdivisions.

2. Costs to assess damages to natural resources, wildlife, or habitat.

3. Costs incurred to monitor the cleanup of the natural gas, oil, or drilling waste spilled.

4. Loss of State or local government tax revenues resulting from damages to real or personal property proximately resulting from a discharge.

(2) For the purposes of this Part, 'oil' and 'drilling wastes' include, but are not limited to: petroleum, refined or processed petroleum, petroleum by-products, oil sludge, oil refuse, oil mixed with wastes and chemicals, or other materials used in the exploration, recovery, or processing of oil. 'Oil' does not include oil carried in a vessel for use as fuel in that vessel.

(3) 'Natural gas' includes natural gas, liquefied natural gas, and natural gas by-products. 'Natural gas' does not include natural gas carried in a vessel for use as fuel in that vessel.

(4) 'Exploration' means undersea boring, drilling, and soil sampling.

(5) 'Injured party' means any person who suffers damages from natural gas, oil, or drilling waste which is discharged or leaks into marine waters, or from offshore exploration. The State, or a county or municipality, may be an injured party.

(6) 'Responsible person' means any of the following:

a. The owner or transporter of natural gas, oil, or drilling waste which causes an injury covered by this Part.

b. The owner, operator, lessee of, or person who charters by demise, any offshore well, undersea site, facility, oil rig, oil platform, vessel, or pipeline which is the source of natural gas, oil, drilling waste, or is the source or location of exploration which causes an injury covered by this Part.

'Responsible party' does not include the United States, the State, any county, municipality or public governmental agency; however, this exception to the definition of 'responsible person' shall not be read to exempt utilities from the provisions of this Part.

(7) 'Offshore waters' shall include both the territorial sea extending seaward from the coastline of North Carolina to the State and federal boundary, and United States jurisdictional waters of the Atlantic Ocean adjacent to the territorial sea of the State.

(8) 'Natural resources' shall include 'marine and estuarine resources' and 'wildlife resources' as those terms are defined in G.S. 113-129(11) and G.S. 113-129(17), respectively.

"*§ 143-215.94P. Liability under this section; exceptions.*

(a) Any responsible person shall be strictly liable, notwithstanding any language of limitation found in G.S. 143-215.89, for all cleanup and removal costs and all direct or indirect damages incurred within the territorial jurisdiction of the State by any injured party, which arise out of, or are caused by, the discharge or leaking of natural gas, oil, or drilling waste into or onto 'coastal fishing waters' as defined in G.S. 113-129(4), or offshore waters, or by any exploration in or upon coastal fishing or offshore waters, from any of the following sources:

(1) Any offshore well or undersea site at which there is exploration for or extraction or recovery of natural gas or oil.

(2) Any offshore facility, oil rig, or oil platform at which there is exploration for, or extraction, recovery, processing, or storage of, natural gas or oil.

(3) Any vessel offshore in which natural gas, oil, or drilling waste is transported, processed or stored other than for purposes of fuel for the vessel carrying it.

(4) Any pipeline located offshore in which natural gas, oil, or drilling waste is transported.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the State or a local government, caused solely by any act of war,

hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant. In any action arising under the provisions of this Article wherein this exception is raised as a defense to liability, the burden of proving that the alleged third-party intervention occurred in such a manner as to limit the liability of the person sought to be held liable shall be upon the person charged.

(4) Natural seepage not caused by a responsible person.

(5) Discharge or leaking of oil or natural gas from a private pleasure boat or commercial fishing vessel having a fuel capacity of less than 5,000 gallons.

(6) Damages which arise out of, or are caused by, a discharge which is authorized by a State or federal permit.

(7) Damages that could have been mitigated by the injured party in accordance with common law.

(c) A court of suitable jurisdiction in any action under this Part may award reasonable costs of the suit and attorneys' fees, and the costs of any necessary expert witnesses, to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant only if the court finds that the plaintiff commenced or prosecuted the suit under this Part in bad faith or solely for purposes of harassing the defendant.

"*§ 143-215.94Q. Joint and several liability; damages; personal injury.*

(a) Liability under this Part shall be joint and several. However, this section does not bar a cause of action that a responsible person has or would have, by reason of subrogation or otherwise, against any person.

(b) This section does not prohibit any person from bringing an action for damages caused by natural gas, oil or drilling waste, or by exploration, under any other provisions or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for any loss or injury for which the party is or has been awarded damages under any other provisions or principles of law. G.S. 143-215.94P(b) does not create any defense not otherwise available regarding any action

brought under any other provision or principle of law, including, but not limited to, common law.

(c) This section shall not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring such an action under any provision or theory of law.

"*§ 143-215.94R. Removal of prohibited discharges.*

(a) The Department shall be authorized and empowered to proceed with the cleanup of discharges covered under this Part pursuant to the authority granted to the Department in G.S. 143-215.84(b) and G.S. 143-215.94U(b)(2).

(b) Any unexplained discharge of oil, natural gas or drilling wastes occurring in waters beyond the jurisdiction of the State that for any reason penetrates within State jurisdiction shall be removed by or under the direction of the Department. Except for any expenses incurred by the responsible person, should such person become known, all expenses incurred in the removal of such discharges shall be paid promptly by the State from the 'Oil and Other Hazardous Substances Pollution Protection Fund' established pursuant to G.S. 143-215.87 or from any other available sources. In the case of unexplained discharges, the matter shall be referred by the Secretary to the North Carolina Attorney General for collection of damages pursuant to G.S. 143-215.94S of this Part. At his discretion, the Attorney General may refer the matter to the State Bureau of Investigation or other appropriate State or federal authority to determine the identity of the responsible person.

(c) Nothing in this section is intended to preclude cleanup and removal by any person threatened by such discharges, who, as soon as is reasonably possible, coordinates and obtains approval for such actions with ongoing State or federal operations and appropriate State and federal authorities.

(d) No action taken by any person to contain or remove an unlawful discharge shall be construed as an admission of liability for said discharge.

"*§ 143-215.94S. Authorization of the Attorney General; citizens' suits.*

(a) For any violation of this Part, the Attorney General may, on behalf of the State and on behalf of affected citizens of the State as a class, bring a civil action in the Superior Court of Wake County against the alleged responsible person. The action may seek:

(1) Injunctive relief; or

(2) Damages caused by the violation; or

(3) Both damages and injunctive relief; or

(4) Such other and further relief in the premises as the Court shall deem proper.

(b) Any injured party under this Part may bring a civil action for damages against the alleged responsible person. Civil actions under this subsection shall be brought in the superior court of the county in which the alleged injury occurred or in which the alleged damaged property is located, or in the county in which the injured party resided.

(c) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek injunctive or other relief.

"§ *143-215.94T. Notification by persons responsible for discharge.*

(a) Any person responsible for an offshore discharge under this Part shall immediately notify the Division of Emergency Management pursuant to rules established by the Secretary of Crime Control and Public Safety, if any, but in no case later than two hours after the discharge. Failure to so notify the Division of Emergency Management shall make the responsible person liable to the penalties set out in subsection (b) of this section. No penalty shall be imposed under this section when the owner or operator has promptly reported the discharge to federal authorities designated pursuant to 33 U.S.C. § 1321.

(b) The civil penalty for failure to immediately report a discharge under this Part shall be determined by the Commission. In determining the amount of a penalty for failure to report under this section, the Commission shall take into consideration such circumstances as the gravity of the violation, the previous record of the responsible person in complying with the terms of this Article, whether the violator reported the discharge and if so after what period of time following the spill, the size of the business of the responsible person and the effect of the penalty on the violator's ability to continue in business, and other relevant factors; provided that the penalty assessed under this section shall not exceed the following daily maximum amounts, based upon the quantity of oil spilled:

(1) Up to 50,000 gallons .....$ 50,000
(2) More than 50,000 gallons. 250,000

For purposes of this section, each day or any part thereof during which a discharge goes unreported by the responsible person shall constitute a separate offense.

"§ *143-215.94U. Oil spill contingency plan.*

(a) The State Emergency Response Commission, in consultation with the Secretary of Administration or his designee in the Outer Continental Shelf Lands Office, shall develop a State oil spill contingency plan relating solely to the undersea exploration, extraction, production and transport of oil or natural gas in the marine environment off the North Carolina coast, including any such

development on the Outer Continental Shelf seaward of the State's jurisdiction over its territorial waters.

(b) The Secretary of Crime Control and Public Safety or his designee shall establish, pursuant to such a plan, an emergency oil spill control network which shall be comprised of available equipment from appropriate State, county and municipal governmental agencies. Such network shall be employed to provide an immediate response to an oil discharge into the offshore marine environment which is reasonably likely to affect the State's coastal waters. Furthermore, such network shall be employed in conjunction with the cleanup operations under this Article or any applicable federal law, required of the owner or operator of the discharging operation, vessel, or facility, the Department of Natural Resources and Community Development, and any federal agency.

(1) The Secretary of Crime Control and Public Safety or his designee shall make an inventory, including its location and condition, of all equipment owned by the State, its counties and municipalities, and private equipment that is available to the State for leasing in the case of an oil spill including costs of leasing, that would be capable of participating in discharge cleanup operations.

(2) The Secretary of Crime Control and Public Safety shall at his discretion have the power to deploy such equipment in participating in a discharge cleanup operation.

(3) The Secretary of Natural Resources and Community Development shall be authorized to reimburse such State agencies, counties, and municipalities for use of such equipment with such funds as may be available from the 'Oil or Other Hazardous Substances Pollution Protection Fund' created pursuant to G.S. 143-215.87 or any other sources.

(4) The oil spill contingency plan and oil spill response network developed pursuant to this section shall be reviewed and evaluated for adequacy and continued feasibility every three years, or more often if deemed appropriate by the Secretary of Crime Control and Public Safety.

"§ *143-215.94V. Emergency proclamation; Governor's powers.*

(a) Whenever any emergency exists or appears imminent, arising from the discharge of oil or other pollutants within the marine environment, the Governor shall by proclamation declare the fact and that a state of emergency exists in the appropriate sections of the State. Upon such proclamation, the Governor shall have all powers enumerated in G.S. 14-288.15, subject to the provisions of G.S. 14-288.16.

(b) If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, declare the fact and that a state of emergency exists in the appropriate sections of the State.

(c) In performing his duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the federal government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to an emergency described herein.

(d) In addition to the powers enumerated in G.S. 14-288.15, in the case of such an emergency described in subsection (a) of this section, the Governor is further authorized and empowered to transfer any funds available to him by statute for emergency use into the 'Oil and Other Hazardous Substances Pollution Protection Fund' created pursuant to G.S. 143-215.87, to be utilized for the purposes specified therein.

"*§ 143-215.94W. Federal law.*

Nothing in this Part shall authorize State agencies to impose any duties or obligations in conflict with limitations on State authority established by federal law at the time such agency action is taken. Likewise, no additional liability is established by this Part to the extent that, at the time of the injury, federal law establishes limits on liability which preempt State law."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1989.

H.B. 703 **CHAPTER 657**

AN ACT TO PROVIDE FOR A CONTINUING EDUCATION PROGRAM FOR INSURANCE AGENTS, BROKERS, ADJUSTERS, AND MOTOR VEHICLE DAMAGE APPRAISERS.

The General Assembly of North Carolina enacts:

Section 1. Article 45 of Chapter 58 of the General Statutes is amended by adding two new sections to read:

"*§ 58-635. Continuing education program for licensees.*

(a) The Commissioner is authorized to promulgate rules to provide for a program of continuing education requirements for the purpose of enhancing the professional competence and professional responsibility of adjusters and motor vehicle damage appraisers. Such rules may include criteria for:

(1) The content of continuing education courses;

(2) Accreditation of continuing education sponsors and programs;

(3) Accreditation of videotape or other audiovisual programs;
(4) Computation of credit;
(5) Special cases and exemptions;
(6) General compliance procedures; and
(7) Sanctions for noncompliance.

(b) The Commissioner is authorized to adopt rules to provide for the continuing professional education of all agents and brokers, including fraternal field marketers, but excluding limited field representatives. In promulgating such rules, the Commissioner may use the same criteria as specified in subsection (a) of this section.

(c) On and after January 1, 1992, any individual agent or broker desiring to renew an appointment or license shall offer evidence satisfactory to the Commissioner that he has complied with the continuing professional education requirements approved by the Commissioner.

(d) Annual continuing professional education hour requirements shall be determined by the Commissioner, but shall not be more than 12 credit hours.

(e) No more than seventy-five percent (75%) of the requirement relating to life or health insurance agents or brokers may be met by taking courses offered by licensed life or health insurance companies with which those agents or brokers have appointments.

(f) The Commissioner may adopt rules for waiving the requirements under this section for cases of certified physical incapacity or illness or undue hardship.

(g) The Commissioner shall permit any licensee to carry over to a subsequent calendar year up to seventy-five percent (75%) of the required annual hours of continuing professional education.

(h) Any licensee who offers evidence satisfactory to the Commissioner on forms supplied by the Commissioner that he has satisfactorily completed the required continuing professional education courses shall be deemed to have complied with this section.

(i) The Commissioner is authorized to approve continuing professional education courses.

(j) The Commissioner is authorized to establish fees to be paid to the Commissioner by licensees who are required to comply with this section or by course vendors for the purpose of offsetting the cost of additional staff and resources to administer the program authorized by this section.

"*§ 58-636. Continuing education advisory committee.*

(a) The Commissioner shall appoint, in accordance with G.S. 58-7.4, one advisory committee for fire and casualty insurance licensees and one advisory committee for life and health insurance licensees. The advisory committees shall recommend reasonable rules

to the Commissioner for promulgation under G.S. 58-635. The Commissioner may adopt, reject, or modify such recommendations. After the promulgation of rules under G.S. 58-635, the committees may from time to time make further recommendations to the Commissioner for additional rules or changes in existing rules.

(b) The fire and casualty advisory committee shall comprise:

(1) Two employees of the Department of Insurance;

(2) One representative from a list of two nominees submitted by the Independent Insurance Agents of North Carolina;

(3) One representative from a list of two nominees submitted by the Carolinas Association of Professional Insurance Agents (North Carolina Division);

(4) One representative of a licensed property and casualty insurance company writing business in this State that operates through an exclusive agency force;

(5) One representative from a list of two nominees submitted by the North Carolina Adjusters Association;

(6) One representative of fire and casualty insurers from a list of two nominees submitted by the Association of North Carolina Property and Casualty Insurance Companies; and

(7) One representative from a list of two nominees submitted by the Department of Community Colleges.

(c) The life and health advisory committee shall comprise:

(1) Two employees of the Department of Insurance, which may be the same persons appointed under subsection (b) of this section;

(2) One representative from a list of two nominees submitted by the North Carolina Association of Life Underwriters;

(3) One representative of life and health insurers from a list of two nominees submitted by the Association of North Carolina Life Insurance Companies;

(4) One representative from a list of two nominees submitted by the General Agents and Managers Conference;

(5) One representative from a licensed medical or hospital service corporation;

(6) One licensed health insurance agent from a list of two nominees submitted by the North Carolina Association of Health Underwriters;

(7) One representative of a licensed life or health insurer writing business in this State that operates through an exclusive agency force;

(8) One representative from a list of two nominees submitted by the North Carolina Fraternal Congress; and

(9) One representative from a list of two nominees submitted by the Department of Community Colleges."

Sec. 1.1. G.S. 58-615(f)(1) reads as rewritten:

"(1) Bond. Prior to issuance of a license as a broker, the applicant shall file with the Commissioner and thereafter, for as long as the license remains in effect, shall keep in force a bond in favor of the State of North Carolina for the use of aggrieved parties in the sum of not less than fifteen thousand dollars ($15,000), executed by an authorized corporate surety approved by the Commissioner. The aggregate liability of the surety for any and all claims on any such bond shall in no event exceed the sum thereof. The bond shall be conditioned on the accounting by the broker (i) to any person requesting the broker to obtain insurance for moneys or premiums collected in connection therewith, (ii) to any licensed insurer or agent who provides coverage for such person with respect to any such moneys or premiums, and (iii) to any premium finance company or to any association of insurers under any plan or plans for the placement of insurance under the laws of North Carolina which afforded coverage for such person with respect to any such moneys or premiums. No such bond shall be terminated unless at least 30 days' prior written notice thereof is given by the surety to the licensee and the Commissioner. Upon termination of the license for which the bond was in effect, the Commissioner shall notify the surety within 10 business days."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1989.

H.B. 813 **CHAPTER 658**

AN ACT AUTHORIZING CABARRUS COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND ESTABLISHING A CABARRUS COUNTY TOURISM AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. *Occupancy Tax Levy.* (a) Authorization and Scope. The Cabarrus County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of not less than three percent (3%) nor more than five percent (5%) of the gross

receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. On and after the effective date of the levy of the tax, every operator of a business subject to the tax levied under this act shall collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the Cabarrus County Finance Officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the county in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of fifty dollars ($50.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good

cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Use and Disposition of Revenue. Cabarrus County shall remit one hundred percent (100%) of the net proceeds of the occupancy tax to the Cabarrus County Tourism Authority established under Section 2 of this act. As used in this act, "net proceeds" means gross proceeds less the direct cost to the county of administering and collecting the tax, not to exceed five percent (5%) of the amount collected.

The Authority may expend occupancy tax revenue remitted to it by the county during a fiscal year, and any other revenue it receives, only to develop or promote tourism, tourist-related support services and facilities, tourist-related events, tourist-related activities, or tourist attractions.

The Cabarrus County Finance Officer shall distribute the amounts due the Authority at least monthly.

(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Cabarrus County Board of Commissioners. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. *Establishment, Appointment, and Duties of Cabarrus County Tourism Authority.* (a) Establishment and Membership. When the Cabarrus County Board of Commissioners adopts a resolution levying a room occupancy tax pursuant to this act, it shall establish and create the Cabarrus County Tourism Authority composed of nine members, with seats on the Authority numbered one through nine, all of whom shall be appointed by the board, selected as follows:

(1) Seats 1, 4, and 7 shall be selected by the board at large and shall include, but not be limited to, at least one member of the board or the Cabarrus County Manager;

(2) Seats 2, 5, and 8 shall be appointed by the board from a list of at least three persons submitted by the Concord-Cabarrus Chamber of Commerce; and

(3) Seats 3, 6, and 9 shall be appointed by the board from a list of at least three persons submitted to the board by the Kannapolis Chamber of Commerce.

(b) Terms of Office. Except as otherwise provided in the schedule set forth below, the term of office of each member of the Authority shall be three years. The terms shall be staggered so that after the initial members of the Authority are appointed, three members are appointed each year, implemented as follows:

(1) Seats 1, 2, and 3 shall be appointed initially for one year, and thereafter for three years;

(2) Seats 4, 5, and 6 shall be appointed initially for two years, and thereafter for three years; and

(3) Seats 7, 8, and 9 shall be appointed initially for three years, and thereafter for three years.

(c) Powers and Duties of the Authority. In addition to any other powers and duties of the Authority otherwise conferred by law, the Authority may contract with any person, firm, corporation, or agency to assist it in the promotion of travel and tourism and to carry out the purposes identified in Section 1(e) of this act. The Authority may accept contributions from any source to be used for the purposes stated in Section (1)(e) of this act.

On or before April 1 of each year after the levy of the tax authorized in this act, the Authority shall prepare an annual budget based upon anticipated revenues and shall submit the budget to the Cabarrus County Manager for processing and approval through the regular budget procedure of the County. The Authority shall make quarterly reports to the board detailing its revenues, expenditures, and activities. The County may audit the Authority's financial records upon reasonable notice to the Authority. At the end of each fiscal year, any funds of the Authority not expended, obligated, or reserved, as approved by the County, shall be remitted to Cabarrus County for its use.

Sec. 3. Effective Date. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1989.

H.B. 816 **CHAPTER 659**

AN ACT TO ANNEX TERRITORY TO THE TOWN OF RIVER BEND.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of River Bend are as follows:

Lying and being situated in number eight township, Craven County, North Carolina, described as follows: Beginning at a point in the centerline of secondary road Number 1307 (Formerly secondary road number 1221), which said point of beginning is identified with the letter "D" on that certain map or plat entitled Trent Estates, which said map was prepared by Albert R. Bell, C.E., on April 5, 1966 and which said map appears of record in the office of the Register of Deeds of Craven County in map book 10 at page 72 and running thence from said point of beginning so located South 30°45' East 30.0 feet to a point on the Southern right of way line of Secondary Road Number 1307, thence in a Westwardly direction along and with said Southern right of way line of secondary road number 1307 to its intersection with the Southern right of way line of U.S. Highway No. 17; Thence with the Southern right of way line of U.S. Highway Number 17 in a Westwardly direction to its intersection with Canoe Branch; Thence in a Southern direction with the centerline of Canoe Branch to a marked gum on Canoe Branch. thence down and with the centerline of said Canoe Branch the following courses and distance; South oo° 50' East 162.0 feet, South 14° 30' East 142.0 feet, South 10° 45' East 245.0 feet, South 65°45' East 150.0 feet, South 40° 20' East 185.0 feet, South 12°15' East 248.0 feet, South 1°30' West 387.5 feet, South 6°10' West 43.0 feet, South 23°15' West 377.0 feet, South 26° 25' East 108.0 feet, South 68°50' East 152.0 feet, North 66° 00' East 106.0 feet, North 63°40' East 160.0 feet to the mouth of the aforesaid Canoe Branch at Trent River; Thence down and with the run of Trent River (including a 14 acre island which lies north of the main run of said river) to the center of the run of the body of water sometimes known as the Thoroughfare, which connects Samuel's Creek, as shown on the above-mentioned map, with Trent River; Thence northwestwardly along and with the center of the run of said body of water (sometimes known as the Thoroughfare) to the center of the run of Samuel's Creek (specifically excluding the island designated on the above-mentioned map with the word, "Mitchell Island-B.H. Oates"); Thence continuing in a generally northwestward direction, along and with the center of the run of Samuel's Creek to to its intersection with Rocky Run Branch; Thence with the centerline of Rocky Run Branch to its intersection with the Southern Right of Way of U.S. Highway No. 17; Thence with the Southern Right of Way Line of U.S. Highway No. 17 to a Curve to the Right having a radius of 1,863.62 feet an Arc Length of 589.43 feet to a point of Tangent on said right of way line; Thence continuing with said Right of Way line S67°50' West 1847.15 feet to a point; thence crossing said highway North 22°10' West 150.0 feet to a point on the Northern right of way line of said U.S. Highway 17,

the Southeastern corner of Springdale Subdivision; thence with the Northern right of way line of said U.S. Highway No. 17; South 67°37'West 1,313.45 feet to an iron stake, the Southwestern corner of said Springdale Subdivision; Thence North 22°23' West 741.09 feet to an iron stake; thence North 69°43'03" East 949.23 feet to an iron stake; thence South 62°45'03" East 563.44 feet to an iron stake; thence South 22°22'03" East 277.0 feet to an iron stake on the Northern right of way line of U. S. Highway No. 17; thence South 22°10' West 150 feet to a point on the Southern right of way line of U. S. Highway No.17; thence with the Southern right of way line of U. S. Highway No. 17 South 67°50' West to a point in the right of way of said highway which lies N21°00'West from a point designated by the letter "C" on the above mentioned map; thence continuing with said Southern right of way line South 67°50' West 2,271.2 feet to an iron stake, the Northwestern corner of Piner Estates; thence South 27° 29'38"East 528.53 feet to an iron stake, the Southwestern corner of Piner Estates, thence with the Southern line of Piner Estates North 53°05'15" East 1186.76 feet and North 69°00' East 1106.85 feet to an iron stake, the Southeastern corner of Piner Estates; thence South 21°00' East to the centerline of Secondary road No. 1307, (this point being designated by the letter "C" on the above-mentioned map); thence North 69°00' East along and with the centerline of said road 254.0 feet; thence continuing along and with the centerline of said road North 63°20' East 233.0 feet; thence continuing along and with the centerline of said road North 57°30'East 76.8 feet to the point of beginning.

Sec. 2. This act is effective upon ratification. Taxes for the initial year shall be prorated in accordance with G.S. 160A-58.10.

In the General Assembly read three times and ratified this the 19th day of July, 1989.

H.B. 839 **CHAPTER 660**

AN ACT TO AUTHORIZE THE TOWN OF GARNER TO LEVY AN OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. (a) Authorization; Scope. If the Wake County Board of Commissioners has not levied the tax authorized by Section 1 of Chapter 850 of the 1986 Session Laws or has levied the tax at a rate of less than three percent (3%), the Town of Garner Board of Aldermen may, by ordinance, levy a room occupancy tax at a rate that does not exceed three percent (3%) when combined with the Wake County occupancy tax rate, if any. Before adopting an ordinance to

levy a room occupancy tax, the Town of Garner Board of Aldermen must hold a public hearing on the proposed tax and must give at least 10 days' public notice of the hearing. This tax shall apply to the gross receipts derived from the rental in the Town of Garner of any room, lodging, or similar accommodation subject to sales tax under G.S. 105-164.4(3). This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(b) Collection. Every operator of business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted by him to the town a discount of one percent (1%) of the amount collected as reimbursement for the expenses incurred in collecting the tax.

(c) Administration. The town shall administer a tax levied under this act. A tax levied under this act is due and payable to the town tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied. A return filed with the tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000) and imprisonment not to exceed six months, or both. The Town of Garner Board of Aldermen may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(e) Use and Distribution of Tax Revenue. The Town of Garner shall distribute the net proceeds of the occupancy tax as follows:

(1) The first fifty percent (50%) of net proceeds from the tax in each fiscal year up to a maximum of one hundred thousand dollars ($100,000) shall be transferred by the town to the Garner Convention and Visitor Bureau established pursuant to this act for use by the Bureau for activities and programs aiding and encouraging convention and visitor promotion;

(2) The remaining net proceeds shall be retained by the town and may be used only to fund visitor-related programs and activities, including cultural programs, events, or festivals, and convention and visitor programs and activities of the Garner Convention and Visitor Bureau.

The town may contract with a nonprofit organization to undertake or carry out the activities and programs for which the revenue may be expended. All contracts entered into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations. As used in this subsection, "net proceeds" means gross proceeds less the direct cost to the town of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.

(f) Bureau Established. When the Town of Garner Board of Aldermen adopts an ordinance levying an occupancy tax, it shall also adopt an ordinance establishing the Garner Convention and Visitor Bureau. The Bureau shall be governed by a Board of Directors consisting of five members appointed by the Garner Board of Aldermen as follows:

(1) At least one owner or operator of hotels, motels, or other taxable accommodations;

(2) At least one person directly involved in a tourist- or convention-related business who does not own or operate a hotel, motel, or other taxable accommodation;

(3) At least one resident of Garner who is not directly involved in a tourist or convention-related business and who does not own or operate a hotel, motel, or other taxable accommodation; and

(4) At least one individual who is a member of the Garner Chamber of Commerce, selected by the Chairman of the Board of Directors of the Garner Chamber of Commerce.

Members shall be appointed by the Board of Aldermen and serve according to the ordinances and regulations of the town concerning service on the board of directors.

(g) Powers and Duties of Bureau. The Garner Convention and Visitor Bureau may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions. The Bureau shall prepare an annual budget based on anticipated revenues and shall submit the budget to the Garner Town Manager for processing and approval through the regular budget procedure of the town. The Bureau shall make quarterly reports to the town detailing its revenues, expenditures, and activities. The town may audit the Bureau's financial records upon reasonable notice to the Bureau. At the end of each fiscal year, any funds of the Bureau not expended, and not obligated or reserved as approved by the Board of Aldermen, shall be remitted to the Town of Garner for use in accordance with subdivision (e)(2).

(h) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(i) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Town of Garner Board of Aldermen. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Effect of County Tax on Previously Levied Town Tax. If the Town of Garner levies an occupancy tax under Section 1 of this act, and the Wake County Board of Commissioners subsequently adopts a resolution levying an occupancy tax in Wake County, the occupancy tax levied by the town shall be repealed as of the effective date of the county levy if the county levies an occupancy tax at the rate of three percent (3%), and shall otherwise be reduced by the amount that the combined county and town occupancy tax rates exceed three percent (3%).

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1989.

S.B. 15 **CHAPTER 661**

AN ACT CHANGING THE INTEREST PAYMENT METHOD ON PARTIAL LICENSE FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-94 reads as rewritten:

"*§ 20-94. Partial payments.*

In the purchase of licenses, where the gross amount of the license fee to any one owner amounts to more than four hundred dollars ($400.00), half of such payment may, if the Commissioner is satisfied of the financial responsibility of such owner, be deferred until June 1 in any calendar year upon the execution to the Commissioner of a draft upon any bank or trust company upon forms to be provided by the Commissioner in an amount equivalent to one half of such ~~tax~~ fee, plus a carrying charge of ~~eight percent (8%)~~ three percent (3%) of the deferred portion of the license fee: Provided, that any person using any tag so purchased after the first day of June in any such year without having first provided for the payment of such draft, shall be guilty of a misdemeanor. No further license plates shall be issued to any person executing such a draft after the due date of any such draft so long as such draft or any portion thereof remains unpaid. Any such draft being dishonored and not paid shall be subject to the penalties prescribed in G.S. 20-178 and shall be immediately turned over by the Commissioner to his duly authorized agents and/or the State Highway Patrol, to the end that this provision may be enforced. When the owner of the vehicles for which a draft has been given sells or transfers ownership to all vehicles covered by the draft, such draft shall become payable immediately, and such vehicles shall not be transferred by the Division until the draft has been paid. Any one owner whose gross license fee amounts to more than two hundred dollars ($200.00) but not more than four hundred dollars ($400.00) may also be permitted to sign a draft in accordance with the foregoing provisions of this section provided such owner makes application for the draft on or before February 1 during the license renewal period."

Sec. 2. This act is effective upon ratification and applies to fees deferred on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1989.

S.B. 64 **CHAPTER 662**

AN ACT TO AMEND THE LAW REGARDING RETIREMENT AS IT APPLIES TO THE CHARLOTTE/MECKLENBURG PUBLIC BROADCASTING AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Effective April 1, 1989, the Charlotte/Mecklenburg Public Broadcasting Authority may become a participating employer in the Local Governmental Employees' Retirement System upon the election of the governing board of the Authority and approval of the Board of Trustees. The governing board of the Authority may provide for its employees to receive prior service credits in the Retirement System equal to the period of prior service these employees have rendered to the Authority as of the effective date of participation in the Retirement System. The governing body of the Authority may provide for its employees to receive said prior service credits without transfer of the assets of the Authority's defined contribution plan.

Sec. 2. All laws and clauses of laws in conflict herewith, to the extent of this conflict, shall be inapplicable to the Charlotte/Mecklenburg Public Broadcasting Authority.

Sec. 3. This act shall apply only to the Charlotte/Mecklenburg Public Broadcasting Authority.

Sec. 4. This act shall become effective April 1, 1989.

In the General Assembly read three times and ratified this the 20th day of July, 1989.

S.B. 357 **CHAPTER 663**

AN ACT TO INCREASE THE AMOUNT OF BAIL BOND AN AUTOMOBILE CLUB MAY POST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 109-40 reads as rewritten:

"*§ 109-40. Authority for qualified surety companies to guarantee certain arrest bond certificates.*

(a) Any domestic or foreign surety company which has qualified to transact business in this State may become a surety, by filing with the North Carolina Department of Insurance an undertaking to become surety, in an amount not to exceed one thousand five hundred dollars ~~($500.00)~~ ($1,500) with respect to each guaranteed arrest bond certificate issued by an automobile club or association.

(b) The undertaking shall be in a form to be prescribed by the Department of Insurance and shall state:

(1) The name and address of the automobile club or clubs or automobile association or associations with respect to which the surety company undertakes to guarantee the arrest bond certificates.

(2) The unqualified obligation of the surety company to pay the fine or forfeiture, in an amount not to exceed one thousand five hundred dollars ~~($500.00)~~ ($1,500) of any person who, after posting a guaranteed arrest bond certificate which the surety has undertaken to guarantee, fails to make the appearance for which the guaranteed arrest bond certificate was posted."

Sec. 2. G.S. 109-41(a) reads as rewritten:

"(a) Any guaranteed arrest bond certificate guaranteed by a surety company pursuant to G.S. 109-40, shall be accepted in lieu of cash bail or other bond in an amount not to exceed one thousand five hundred dollars ~~($500.00)~~ ($1,500) as a bail bond, when signed by the person whose signature appears on the certificate, to guarantee the appearance of that person in any court in this State at the time set by the court when the person is arrested for the violation of any motor vehicle law of the State or any motor vehicle ordinance of any motor vehicle law of the State or any motor vehicle ordinance of any municipality of this State. The guaranteed arrest bond certificate shall not apply to, and shall not be accepted in lieu of cash bail or bond when the person has been arrested for any impaired driving offense or for any felony."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1989.

S.B. 127 **CHAPTER 664**

AN ACT ESTABLISHING PRETRIAL RELEASE SERVICE FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(5) For using pretrial release services, the district or superior court judge shall, upon conviction, impose a fee of fifteen dollars ($15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services."

Sec. 2. G.S. 7A-304(b) reads as rewritten:

"(b) On appeal, costs are cumulative, and costs assessed before a magistrate shall be added to costs assessed in the district court, and costs assessed in the district court shall be added to costs assessed in the superior court, except that the fee for the Law-Enforcement Officers' Benefit and Retirement Fund and the Sheriffs' Supplemental Pension Fund and the fee for pretrial release services shall be assessed only once in each case. No superior court costs shall be assessed against a defendant who gives notice of appeal from the district court but withdraws it prior to the expiration of the 10-day period for entering notice of appeal. When a case is reversed on appeal, the defendant shall not be liable for costs, and the State shall be liable for the cost of printing records and briefs in the Appellate Division."

Sec. 3. This act is effective for defendants released to the supervision of an agency providing pretrial release services on or after October 1, 1989.

In the General Assembly read three times and ratified this the 24th day of July, 1989.

S.B. 464 **CHAPTER 665**

AN ACT TO SUBJECT STATE-ADMINISTERED RETIREMENT SYSTEMS TO INCOME WITHHOLDING FOR CHILD SUPPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-9 reads as rewritten:

"*§ 135-9. Exemption from taxes, garnishment, attachment, etc.*

Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 *et seq.*, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, or annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Chapter, and the moneys in the various funds created by this Chapter, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Chapter specifically otherwise provided. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a state-administered retirement system or the former Disability Salary Continuation Plan or the Disability Income Plan of North Carolina may be offset against any retirement allowance, return of contributions or any other right accruing under

this Chapter to the same person, the person's estate, or designated beneficiary."

Sec. 2. G.S. 135-95 reads as rewritten:

"*§ 135-95. Exemption from taxes, garnishment, attachment.*

Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 *et seq.*, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a member in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, garnishment, and the benefits payable under this Article are hereby exempt from any State and local government taxes."

Sec. 3. G.S. 128-31 reads as rewritten:

"*§ 128-31. Exemptions from execution.*

Except for the applications of the provisions of G.S. 110-136, and G.S. 110-136.3 *et seq.*, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, are hereby exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system or Disability Salary Continuation Plan may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary."

Sec. 4. This act shall become effective October 1, 1989, and applies to orders issued on or after that date.

In the General Assembly read three times and ratified this the 24th day of July, 1989.

S.B. 903 **CHAPTER 666**

AN ACT TO PROVIDE THAT AN EMPLOYEE IS NOT DISQUALIFIED FOR UNEMPLOYMENT BENEFITS WHEN THE EMPLOYER FILES FOR BANKRUPTCY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-14 is amended by adding a new subdivision to read:

"(12) Notwithstanding any other provision of this Chapter, no otherwise eligible individual shall be denied benefits for any weeks if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work solely as a result of a lack of work caused by the bankruptcy of his employer."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of July, 1989.

H.B. 556 **CHAPTER 667**

AN ACT TO AUTHORIZE THE SECRETARY OF REVENUE TO ENTER INTO COOPERATIVE AGREEMENTS WITH OTHER STATES TO ADMINISTER THE FUEL TAX AND TO MAKE A CONFORMING CHANGE TO THE DEFINITION OF MOTOR CARRIER.

The General Assembly of North Carolina enacts:

Section 1. Article 36B of Chapter 105 is amended by adding a new section to read:

"*§ 105-449.57. Cooperative agreements between states.*

The Secretary may enter into cooperative agreements with other states for exchange of information in administering the tax imposed by this Article. No agreement, arrangement, declaration, or amendment to an agreement is effective until stated in writing and approved by the Secretary.

An agreement may provide for determining the base state for motor carriers, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of gasoline or other motor fuel taxes and penalties to another jurisdiction, and such other provisions as will facilitate the administration of the agreement.

Notwithstanding the provisions of G.S. 105-259 to the contrary, the Secretary may, as required by the terms of an agreement, forward to officials of another state any information in the Department's possession relative to the use of gasoline or other motor fuels by any motor carrier. The Secretary may disclose to officials of another state the location of offices, motor vehicles, and other real and personal property of motor carriers.

An agreement may provide for each state to audit the records of motor carriers based in the state to determine if the gasoline or other motor fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on motor carriers based in the state to each state in which the carrier has taxable use of gasoline or other motor fuels. For motor carriers not based in this State who have taxable use of gasoline or other motor fuels in this State, the Secretary may utilize the audit findings received from another state as the basis upon which to propose assessments of gasoline or other motor fuel taxes against the carrier as though the audit had been conducted by the Secretary. Penalties and interest shall be assessed at the rates provided in the agreement.

No agreement entered into pursuant to this section may preclude the Department from auditing the records of any motor carrier covered by this Chapter.

The provisions of Article 9 of this Chapter apply to any assessment or order made under this section.

The Secretary may not enter into any agreement that would increase or decrease taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes, and any provision to the contrary is void."

Sec. 2. G.S. 20-88.01 reads as rewritten:

"§ *20-88.01. Registration of certain vehicles for road tax.*

~~Owners of passenger vehicles with seating capacity for more than 20 passengers, road tractors, tractor trucks, or trucks with more than two axles shall, in addition to all other registration fees imposed by this Article, pay a registration fee of ten dollars ($10.00) to register for purposes of the road tax imposed by Article 36B of Chapter 105. This fee~~ A motor carrier, as defined in G.S. 105-449.37(a), shall pay a registration fee of ten dollars ($10.00) to register each vehicle owned by the carrier that is required by G.S. 105-449.47 to be registered with the Commissioner. This fee is in addition to all other registration fees imposed by this Article and shall be paid to the Commissioner at the same time as the fees imposed by G.S. 20-87 or G.S. 20-88 are paid. ~~All vehicles licensed for more than 32,000 pounds are presumed to have more than two axles.~~ When registering a vehicle under this section, the owner of a vehicle that is leased to another shall report the name of the lessee to the Commissioner.

The Commissioner shall report all vehicles registered under this section to the Secretary of Revenue. No registration plate or registration renewal sticker shall be issued for a motor vehicle required to be registered under this section if the owner or lessee of that vehicle is not in compliance with Articles 36A or 36B of Chapter 105. The registration plate or registration renewal sticker issued for a

motor vehicle under G.S. 20-87 or 20-88 signifies registration in accordance with this section. The Commissioner may revoke the registration plate for a motor vehicle registered under this section whenever the owner or lessee of the vehicle fails to comply with Articles 36A or 36B of Chapter 105.

~~This section does not apply to vehicles owned by the United States, the State or its political subdivisions, special mobile equipment as defined in G.S. 20-4.01(44), and vehicles owned by nonprofit religious, educational, charitable, or benevolent organizations.~~"

Sec. 3. Sections 1 and 3 of this act are effective upon ratification. Section 2 of this act shall become effective January 1, 1990.

In the General Assembly read three times and ratified this the 24th day of July, 1989.

H.B. 783 **CHAPTER 668**

AN ACT TO PROVIDE THAT FUNDS SUBJECT TO COMPETING CLAIMS MAY BE DEPOSITED WITH THE CLERK OF COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 22, reads as rewritten:

"*Rule 22. Interpleader.* (a) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims expose or may expose the plaintiff to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of crossclaim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(b) Where funds are subject to competing claims by parties to the action, the court may order the party in possession of the funds either to deposit the funds in an interest bearing account in a bank, savings and loan, or trust company licensed to do business in this State or to deposit the funds with the clerk. If the funds are deposited in a bank, savings and loan, or trust company, the court shall specify the type of interest bearing account to be used. Funds deposited with the clerk shall be invested or deposited as provided in G.S. 7A-112 and G.S. 7A-112.1. Upon determination of the action, the judgment shall

provide for disbursement of the principal and interest earned on the funds while so deposited."

Sec. 2. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 24th day of July, 1989.

H.B. 932 **CHAPTER 669**

AN ACT TO INCREASE THE PENALTY FOR ENGINEERS AND LAND SURVEYORS FOUND GUILTY OF CERTAIN MISCONDUCT IN PROFESSIONAL PRACTICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-21 reads as rewritten:

"§ *89C-21. Disciplinary action -- Reexamination, revocation, suspension, reprimand, or ~~fine~~, civil penalty.*

(a) The Board may suspend, refuse to renew, or revoke the certificate of registration, or, as appropriate, require reexamination, ~~or levy a fine not in excess of five hundred dollars ($500.00)~~ for any engineer or land surveyor, who is found:

(1) Guilty of the practice of any fraud or deceit in obtaining a certificate of registration or certificate of authorization.

(2) Guilty of any gross ~~negligence, incompetence, or misconduct.~~ negligence or misconduct in the practice of his profession. ~~In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice his profession and to suspend his license during any such period.~~

(3) Guilty of any felony or any crime involving moral turpitude.

(4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.

(5) To have been declared insane or incompetent by a court of competent jurisdiction and has not thereafter been lawfully declared sane or competent.

(6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice his profession and suspend his license during any such period.

(b) The Board shall have the power to (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation where one

or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of registration under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars ($2,000) for any engineer or land surveyor who violates any of the provisions of subdivisions (1) through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberation, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violations;

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;

(3) Whether the violation(s) were done wilfully and maliciously; and

(4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Sec. 2. G.S. 89C-22 reads as rewritten:

"*§ 89C-22. Disciplinary action -- Charges; procedure.*

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any individual registrant or against any corporation holding a certificate of authorization. Such charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary of the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board or hearing officer as provided under the requirements of Chapter ~~150A~~ 150B of the General Statutes.

(c) If, after such hearing, a majority of the ~~entire~~ Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the individual's certificate of registration, or a corporation's certificate of ~~authorization.~~ authorization pursuant to G.S. 89C-21.

(d) An individual registrant having a certificate of registration, or corporation holding a certificate of authorization, aggrieved by a final decision of the Board, may appeal for judicial review as provided by Article 4 of Chapter ~~150A.~~ 150B.

(e) The Board may, upon petition of an individual or corporation, whose certificate has been revoked, for reasons it may deem sufficient, reissue a certificate of registration or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Sec. 3. This act shall become effective October 1, 1989, and shall apply to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 24th day of July, 1989.

H.B. 1296 **CHAPTER 670**

AN ACT TO INCREASE THE MAXIMUM FINES IMPOSED FOR CRUELTY TO ANIMALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-360 reads as rewritten:

"§ *14-360. Cruelty to animals; construction of section.*

If any person shall willfully overdrive, overload, wound, injure, torture, torment, deprive of necessary sustenance, cruelly beat, needlessly mutilate or kill or cause or procure to be overdriven, overloaded, wounded, injured, tortured, tormented, deprived of necessary sustenance, cruelly beaten, needlessly mutilated or killed as aforesaid, any useful beast, fowl or animal, every such offender shall for every such offense be guilty of a misdemeanor punishable by a fine of up to ~~one thousand dollars ($1,000)~~ one thousand five hundred dollars ($1,500) and imprisonment for up to one year. In this section, and in every law which may be enacted relating to animals, the words 'animal' and 'dumb animal' shall be held to include every living creature; the words 'torture,' 'torment' or 'cruelty' shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted. Such terms shall not be construed to prohibit the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission."

Sec. 2. G.S. 14-361 reads as rewritten:

"§ *14-361. Instigating or promoting cruelty to animals.*

If any person shall willfully set on foot, or instigate, or move to, carry on, or promote, or engage in, or do any act towards the furtherance of any act of cruelty to any animal, he shall be guilty of a misdemeanor punishable by a fine of up to ~~one thousand dollars ($1,000)~~ one thousand five hundred dollars ($1,500) and imprisonment for up to one year."

Sec. 3. G.S. 14-361.1 reads as rewritten:

"§ *14-361.1. Abandonment of animals.*

Any person being the owner or possessor, or having charge or custody of an animal, who willfully and without justifiable excuse abandons the animal is guilty of a misdemeanor punishable by a fine of up to ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) and imprisonment for up to six months."

Sec. 4. G.S. 14-363 reads as rewritten:

"§ *14-363. Conveying animals in a cruel manner.*

If any person shall carry or cause to be carried in or upon any vehicle or other conveyance, any animal in a cruel or inhuman manner, he shall be guilty of a misdemeanor punishable by a fine of up to ~~one thousand dollars ($1,000)~~ one thousand five hundred dollars ($1,500) and imprisonment for up to one year. Whenever an offender shall be taken into custody therefor by any officer, the officer may take charge of such vehicle or other conveyance and its contents, and deposit the same in some safe place of custody. The necessary expenses which may be incurred for taking charge of and keeping and sustaining the vehicle or other conveyance shall be a lien thereon, to be paid before the same can be lawfully reclaimed; or the said expenses, or any part thereof remaining unpaid, may be recovered by the person incurring the same of the owner of such animal in an action therefor."

Sec. 5. This act shall become effective October 1, 1989, and shall apply to all violations occurring on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 24th day of July, 1989.

H.B. 1750 **CHAPTER 671**

AN ACT TO CLARIFY AND SIMPLIFY THE LAW PROVIDING TAX EXEMPTIONS FOR PERSONS WITH CERTAIN DISABILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-149(a) reads as rewritten:

"(a) There shall be deducted from the net income the following exemptions:

(1) In the case of a single individual who is not a head of household as defined in G.S. 105-135(8), a personal exemption of one thousand one hundred dollars ($1,100). In the case of a single individual who is a head of household, as defined in G.S. 105-135(8), a personal exemption of two thousand two hundred dollars ($2,200).

(2) In the case of a married couple living together, two thousand two hundred dollar ($2,200) exemption to the spouse having the larger adjusted gross income and one thousand one hundred dollar ($1,100) exemption to the

other spouse; provided that the spouse having the larger income may by agreement with the other spouse allow that spouse to claim the two thousand two hundred dollar ($2,200) exemption in which case the spouse having the larger adjusted gross income must file a return and claim only the one thousand one hundred dollar ($1,100) exemption.

(2a) In the case of an individual who qualifies as 'head of household' as defined in subdivision (8) of G.S. 105-135, two thousand two hundred dollars ($2,200), but the 'head of household' exemption shall not be allowable to a married individual living with his or her spouse except as provided in subsection (c)(2) of this section. The 'head of household' exemption shall be in lieu of and not in addition to the exemptions established in subdivisions (1), (2), (4), (6) and (7) of subsection (a). Only one "head of household" exemption shall be allowable with respect to any one household, as the term 'household' is defined in subdivision (8) of G.S. 105-135, and no individual shall be entitled to more than one 'head of household' exemption.

(3) In the case of a married couple living together, the spouse who does not claim the two thousand two hundred dollar ($2,200) exemption as provided in (a)(2), one thousand one hundred dollars ($1,100).

(4) In the case of a widow or widower having minor child or children, natural or adopted, two thousand two hundred dollars ($2,200).

(5) For taxable years, beginning on or between January 1, 1980, and December 31, 1980, seven hundred dollars ($700.00) for each dependent (as defined below) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than one thousand dollars ($1,000), or who is a child of the taxpayer either under 19 years of age or a student regularly enrolled for full-time study in a school, college, or other institution of learning. For taxable years beginning on and after January 1, 1981, eight hundred dollars ($800.00) for each dependent (as defined below) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than one thousand dollars ($1,000), or who is a child of the taxpayer either under 19 years of age or a student regularly enrolled for full-time study in a school, college, or other institution of learning. For the purpose of the preceding sentence, the term 'child' means an

individual who is a son or daughter (natural or adopted), or a stepson or stepdaughter of the taxpayer.

An additional exemption of six hundred sixty dollars ($660.00) for a dependent (as defined in this subdivision) who is a full-time student at an accredited college or university or other institution of higher learning under such rules or regulations as may be prescribed by the Secretary of Revenue. For the purposes of this paragraph, the words 'full-time student' shall mean a dependent enrolled in full-time study on the last day of the income year or enrolled for full-time study for a period of at least five months (whether or not consecutive) during the income year.

For the purposes of this subsection, the term 'dependent' means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

a. Any of the following relatives, whether natural or adopted: a son or daughter (or a descendant of either), a stepson, or stepdaughter, a brother or sister (including a brother or sister of the half blood), a stepbrother, stepsister, father or mother (or an ancestor of either), a stepfather, a stepmother, a son or daughter of a brother or sister, a brother or sister of the father or mother, a son-in-law, a daughter-in-law, a father-in-law, a mother-in-law, a brother-in-law, or a sister-in-law of the taxpayer;
b. An individual who was a member of the same household as the taxpayer and was related to the taxpayer, whether by blood, affinity, or adoption, a foster child of the taxpayer, or an individual of whom the taxpayer had legal custody during the taxable year;
c. A former member of the same household as the taxpayer who otherwise qualifies as a dependent of the taxpayer under subdivision b of this subsection or an individual who otherwise qualifies as a dependent of the taxpayer, who for the taxable year of such taxpayer receives institutional care required by reason of a physical or mental disability.

The exemption provided in this subdivision for children of taxpayers shall be allowed only to the person claiming the two thousand two hundred dollar ($2,200) exemption provided in subdivision (2) of this subsection except, however, that where husband and wife are divorced and

have children of their marriage for which they would otherwise be entitled to an exemption hereunder, the parent furnishing the chief support of his (or her) child during the income year shall be entitled to said exemption, irrespective of whether said parent has custody of said child or children or is head of the household during said year.

For the purpose of determining the chief support of an individual other than a son or daughter (natural or adopted) or a stepson or stepdaughter of the taxpayer, over one half of the support of the individual for the calendar year shall be treated as received from the taxpayer if:

a. No one individual contributed over half of such support;
b. Over half of such support was received from individuals each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;
c. The taxpayer contributed over ten percent (10%) of such support; and
d. Each individual in paragraph b (other than the taxpayer) who contributed over ten percent (10%) of such support files a written declaration (in such manner and form as the Secretary of Revenue may prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

Nothing in this subdivision shall be construed to allow one spouse to claim an exemption for the other spouse under this subdivision.

(6) In the case of an individual who has died during the income year, the same exemptions which would have been allowable to such individual under this subsection had the individual lived the entire income year.

(7) In the case of a divorced person having the sole custody of a minor child or children and receiving no alimony for the support of himself or herself, nor support for a child, or children, two thousand two hundred dollars ($2,200).

(8) In the case of any person who is blind, such person shall be entitled to an additional exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions allowed by law. Provided, such person shall submit to the Department of Revenue a certificate from a physician, an optometrist or from the Department of Human Resources certifying that such condition exists.

(8a) ~~In the case of hemophiliacs meeting the criteria herein contained, such persons shall be entitled to an additional exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions provided by law. Eligible hemophiliacs shall be those who submit to the Division of Health Services of the Department of Human Resources a certificate from a physician or local health department, certifying that their condition is medically characterized as moderate or severe in the case of deficiencies of Factor VII or Factor IX, or in the case of deficiencies in Factors I -- VIII or Factors X -- XIII certifying that their condition causes physical or financial conditions similar to those resulting from Factor VIII or Factor IX deficiencies; and who attach a supporting statement to their North Carolina income tax return, including verification that said certificate has been obtained and submitted to the Division of Health Services of the Department of Human Resources.~~

~~An additional exemption of one thousand one hundred dollars ($1,100) is allowed in addition to all other exemptions provided by law, for each dependent (as defined in subdivision (a)(5) above), who is a hemophiliac meeting the criteria set out in the above paragraph. The Division of Health Services of the Department of Human Resources is directed to develop said certificate and inform physicians and local health departments of its availability.~~

In the case of an individual who has a moderate or severe coagulation (bleeding) disorder or whose dependent has a moderate or severe coagulation disorder, an additional exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to the tax return on which the exemption is claimed a statement from a physician or local health department certifying that the individual or dependent for whom the exemption is claimed has a moderate or severe coagulation disorder.

(8b) In the case of any person who is deaf, such person shall be entitled to an additional exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions provided by law. For purposes of this subdivision, an individual is deaf only if his average loss in the speech frequencies (500 to 2000 Hertz) in the better ear is 86 decibels (I.S.O.) or worse. Provided, such person

shall submit to the Department of Revenue a certificate from a physician certifying that such condition exists.

(8c) ~~In the case of persons suffering from chronic irreversible renal disease, whose condition requires that they utilize dialysis in connection with the amelioration of that condition, such persons shall be entitled to an additional exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions provided by law. Persons eligible for this exemption shall be those who submit to the Division of Health Services of the Department of Human Resources a certificate from a physician or local health department certifying that their condition is such that dialysis is required, as above provided, and who attach a supporting statement to their North Carolina income tax return, including verification that said certificate has been obtained and submitted to the Division of Health Services of the Department of Human Resources.~~

~~An additional exemption of one thousand one hundred dollars ($1,100) is allowed in addition to all other exemptions provided by law, for each dependent (as defined in subdivision (a) above) who suffers from chronic irreversible renal disease and who meets the criteria set out in the above paragraph. The Division of Health Services of the Department of Human Resources is directed to develop said certificate and inform physicians and local health departments of its availability.~~

In the case of an individual who has chronic irreversible renal disease and who requires dialysis in connection with the amelioration of that condition, or whose dependent has chronic irreversible renal disease and requires dialysis, an additional exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to the tax return on which the exemption is claimed a statement from a physician or local health department certifying that the individual or dependent for whom the exemption is claimed has chronic irreversible renal disease and requires dialysis.

(8d) An exemption of one thousand one hundred dollars ($1,100) for an individual who has one of the following conditions or whose dependent has one of these conditions:

a. Paraplegia;

b. Amputation of both legs above the ankle; or

c. A disability that requires the person to use a wheelchair to move about and to function effectively.

This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to his tax return on which he claims the exemption a statement from a physician certifying that the individual or dependent for whom the exemption is claimed has one of the conditions listed above.

(8e) ~~In the case of persons with cystic fibrosis meeting the criteria herein contained, such persons shall be entitled to an additional exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions provided by law. Eligible persons with cystic fibrosis shall be those who submit to the Division of Health Services of the Department of Human Resources a certificate from a physician or local health department certifying that such condition exists.~~

~~An additional exemption of one thousand one hundred dollars ($1,100) is allowed in addition to all other exemptions provided by law for each dependent as defined above, who has cystic fibrosis and meets the criteria as set out above.~~

In the case of an individual who has cystic fibrosis or whose dependent has cystic fibrosis, an additional exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to the tax return on which the exemption is claimed a statement from a physician or local health department certifying that the individual or dependent for whom the exemption is claimed has cystic fibrosis.

(8f) ~~In the case of an individual who has an open neural tube defect or whose dependent has an open neural tube defect, an additional exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must submit to the Division of Health Services of the Department of Human Resources a certificate from a physician or local health department certifying that the individual or dependent for whom the exemption is claimed has an open neural tube defect. Upon receipt of a valid certificate, the Division will send the taxpayer a verification form which~~

~~the taxpayer must attach to the tax return on which the exemption is claimed. The Division shall develop the certificate and verification form and shall inform physicians and local health departments of the availability of the certificate.~~

In the case of an individual who has an open neural tube defect or a closed neural tube defect causing neurological impairment of the same magnitude or a dependent who has an open neural tube defect or a closed neural tube defect causing neurological impairment of the same magnitude, an additional exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to the tax return on which the exemption is claimed a statement from a physician or local health department certifying that the individual or dependent for whom the exemption is claimed has an open neural tube defect or a closed neural tube defect causing comparable impairment.

(8g) In the case of an individual who has multiple sclerosis or whose dependent has multiple sclerosis, an additional exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to his tax return on which he claims the exemption a statement from a physician or local health department certifying that the individual or dependent for whom the exemption is claimed has multiple sclerosis.

(8h) In the case of an individual whose dependent has a severe head injury and is in either a persistent vegetative state or in a severely disabled condition as assessed by the Glasgow Outcome Scale, an exemption on one thousand one hundred dollars ($1,100) for that dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, the taxpayer must attach to his tax return on which he claims the exemption a statement from a physician certifying that the dependent for whom the exemption is claimed has a severe head injury and is in either a persistent vegetative state or in a severely disabled condition as assessed by the Glasgow Outcome Scale.

(8i) In the case of an individual who has muscular dystrophy or whose dependent has muscular dystrophy, an additional

exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to the tax return on which he claims the exemption a statement from a physician or county health department certifying that the individual or dependent for whom the exemption is claimed has muscular dystrophy.

(8j) In the case of an individual who has, or whose dependent has, received an organ or tissue transplant because of which he is required, of medical necessity, to take immunosuppressant medications for the remainder of his life to suppress organ or tissue rejection and potential resulting loss of life or health, an additional exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to the tax return on which he claims the exemption a certificate from a physician or county health department certifying that the individual or dependent for whom the exemption is claimed is the recipient of an organ or tissue transplant and is required to take immunosuppressant medications to suppress rejection of the transplanted organ or tissue.

(9) In the case of an individual who has reached the age of 65 years on or before the last day of the taxable year, an exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions allowed by this section.

(10) In the case of each severely retarded person over half of whose support for the taxable year has been provided by a parent or guardian, there shall be allowed an exemption of two thousand two hundred dollars ($2,200) in addition to all other exemptions allowed by this subsection. For the purposes of this subdivision, 'severely retarded' shall mean a person whose intelligence quotient falls below 40.

In order to qualify for ~~such~~ this exemption the parents or guardian of ~~said persons~~ the severely retarded person shall provide the Department of Revenue with a statement verifying the condition of ~~said persons~~ that person from any medical doctor licensed to practice in North Carolina or any medical doctor who has graduated from a medical college approved by the Board of Medical Examiners of the State of North Carolina and holds a license granted by any state of the United States or the District of Columbia or

practicing psychologist or psychological examiner licensed to practice in North Carolina or any practicing psychologist or psychological examiner licensed or certified as a psychologist or psychological examiner by another state of the United States or the District of Columbia."

Sec. 2. This act is effective for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 24th day of July, 1989.

S.B. 712 **CHAPTER 672**

AN ACT TO CREATE A FELONY OFFENSE OF TRAFFICKING IN AMPHETAMINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95(h) is amended by adding a new subdivision to read:

"(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as 'trafficking in amphetamine' and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a term of at least seven years in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a term of at least 14 years in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a term of at least 35 years in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000)."

Sec. 2. This act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 25th day of July, 1989.

S.B. 884 **CHAPTER 673**

AN ACT TO INCREASE THE FEES PAYABLE TO THE BOARD OF OPTICIANS, TO INCREASE THE LIMIT ON THE EXAMINATION FEE THAT MAY BE CHARGED BY THE NORTH CAROLINA BOARD OF LANDSCAPE ARCHITECTS, AND TO ABOLISH THE REQUIREMENT THAT THE LANDSCAPE ARCHITECT SEAL BEAR THE DATE OF REGISTRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-246 reads as rewritten:

"§ *90-246. Fees.*

In order to provide the means of administering and enforcing the provisions of this Article and the other duties of the North Carolina State Board of Opticians, the Board is hereby authorized to charge and collect fees established by its rules and regulations not to exceed the following:

(1)	Each examination	~~$100.00~~ $125.00
(2)	Each initial license	~~$10.00~~ $25.00
(3)	Each renewal of license	60.00
(4)	Each license issued to a practitioner of another state to practice in this State	~~75.00~~ $100.00
(5)	Each registration of an optical place of business	~~20.00~~ $25.00
(6)	Each application for registration as an opticianry apprentice or intern, and renewal	~~20.00~~ $25.00
(7)	Temporary license issued pursuant to G.S. 90-241(d)	~~20.00.~~ $25.00."

Sec. 2. Funds raised from the increase in fees enacted in Section 1 of this act shall be used by the North Carolina State Board of Opticians for the employment of a person to investigate violations of Article 17, Chapter 90 of the General Statutes.

Sec. 3. G.S. 89A-2(c) reads as rewritten:

"(c) Each landscape architect shall, upon registration, obtain a seal of the design authorized by the Board, bearing the name of the

registrant, ~~date of registration,~~ number of certificate and the legend 'N.C. Registered Landscape Architect'. Such seal may be used only while the registrant's certificate is in full force and effect.

Nothing in this Chapter shall be construed as authorizing the use or acceptance of the seal of a landscape architect in lieu of or substitute for the seal of an architect, engineer or land surveyor."

Sec. 4. G.S. 89A-6 reads as rewritten:

"*§ 89A-6. Fees.*

Fees are to be determined by the Board, but shall not exceed the amounts specified herein, however; fees must reflect actual expenses of the Board.

Application	$100.00
Examination	~~250.00~~ 450.00
License by reciprocity	250.00
Annual license renewal	100.00
Late renewal penalty	50.00
Reissue of certificate	25.00
Temporary permit	150.00
Corporate certificate	250.00

Fees shall be paid to the Board at the times specified by the Board."

Sec. 5. Sections 1 and 2 of this act shall become effective October 1, 1989; the remainder of this act is effective upon ratification and applies to applications for examination submitted on or after that date.

In the General Assembly read three times and ratified this the 25th day of July, 1989.

S.B. 1146 **CHAPTER 674**

AN ACT TO CLASSIFY FOR PROPERTY TAXATION PRECIOUS METALS USED BY MANUFACTURERS AS MACHINERY.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"*§ 105-277.10. Taxation of precious metals used or held for use directly in manufacturing or processing by a manufacturer.*

Precious metals, including rhodium and platinum, used or held for use directly in manufacturing or processing by a manufacturer as part of industrial machinery is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The classified property shall be assessed at the lower of its true value or the manufacturer's original cost less depreciation. The original cost of

the classified property shall be adjusted by the index factor, if any, that applies in assessing the industrial machinery with which the property is used, and the depreciable life of the classified property shall be the life assigned to the industrial machinery with which the property is used. The residual value of the classified property may not exceed twenty-five percent (25%) of the manufacturer's original cost."

Sec. 2. G.S. 105-282.1(a) reads as rewritten:

"(a) Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled thereto. Except as provided below, an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. If the property covered by the application is located within a municipality, that fact shall be shown on the application. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

(1) The United States government, the State of North Carolina and the counties and municipalities of the State are exempted from the requirement that owners file applications for exemption.

(2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (33), or (34), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion of that property.

(3) After an owner of property entitled to exemption under G.S. 105-277.1, 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or exclusion under G.S. 105-275(3), (7) or (12) or G.S. 105-278 has applied for exemption and the exemption has been approved, such owner shall not be required to file applications in subsequent years except in the following circumstances:

a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or

b. There is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption.

(4) After an owner of property entitled to exclusion under G.S. 105-277.10 has applied for the exclusion and the exclusion has been approved, the owner is not required to apply for the exclusion in subsequent years so long as the classified property, including classified property acquired after the application is approved, is used or held for use directly in manufacturing or processing as part of industrial machinery.

(5) Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subdivision applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed."

Sec. 3. This act is effective for taxable years beginning on or after January 1, 1989. Notwithstanding the provisions of G.S. 105-282.1, an application for the benefit provided in this act for the 1989 taxable year shall be considered timely if it is filed on or before September 1, 1989.

In the General Assembly read three times and ratified this the 25th day of July, 1989.

H.B. 848 **CHAPTER 675**

AN ACT TO AUTHORIZE CERTAIN PUBLIC UNITS TO ENTER INTO SINGLE PRIME CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-128 reads as rewritten:

"§ *143-128. Separate specifications for building contracts; responsible contractors.*

(a) Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county or municipality, when the entire cost of such work shall exceed one hundred thousand dollars ($100,000) must have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

(1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or

refrigeration for cold storage (where the cooling load is 15 tons or more of refrigeration), and all work kindred thereto.

(2) Plumbing and gas fittings and accessories, and all work kindred thereto.

(3) Electrical wiring and installations, and all work kindred thereto.

(4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the subdivisions or branches of work enumerated above. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications and awarding additional separate contracts for any other category of work when it is deemed in the best interest of such officer, board, department, commission or commissions to do so.

All contracts hereafter awarded by the State or by a county or municipality, or a department, board, commissioner, or officer thereof, for the erection, construction, alteration or repair of buildings, or any parts thereof, shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch is less than ten thousand dollars ($10,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, the wording 'separate contractor' is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with the State, or with any county or municipality, for the erection, construction, alteration or repair of any building or buildings, or parts thereof.

All public authorities coming within the requirements of this section shall have the authority to purchase and erect prefabricated or relocatable buildings or portions thereof without complying with the provisions hereof, except that portion of the work which must be performed at the construction site.

(b) Notwithstanding the provisions of subsection (a) of this section, a county, municipality, department, board, commissioner, or officer may use the single prime contract system, and may prequalify bidders, for all construction contracts. Provided, however, that all bidders must identify on their bid the electrical, plumbing, and mechanical contractors they have selected. If the contract is to be let under this subsection, each bidder shall make a good faith effort to include minority business subcontractors in an amount not less than ten percent (10%) of the prospective prime contractor's total bid, or shall verify why that bidder was unable to secure qualified minority subcontractors in such an amount."

Sec. 2. This act applies to the Halifax Memorial Hospital, Halifax Nursing Center, Inc., the Roanoke Rapids Graded School District, and the Roanoke Rapids Sanitary District only.

Sec. 3. This act is effective upon ratification and shall expire July 1, 1991.

In the General Assembly read three times and ratified this the 25th day of July, 1989.

H.B. 1203 **CHAPTER 676**

AN ACT TO AUTHORIZE THE NORTH CAROLINA SEDIMENTATION COMMISSION AND LOCAL GOVERNMENTS TO CONSIDER THE PERFORMANCE HISTORY OF AN APPLICANT SUBMITTING AN EROSION CONTROL PLAN PRIOR TO APPROVING SUCH A PLAN, TO PROVIDE FOR A SETBACK FOR LAND-DISTURBING ACTIVITY OCCURRING NEAR CERTAIN TROUT WATERS, TO INCREASE THE CIVIL PENALTY FOR VIOLATIONS OF THE SEDIMENTATION POLLUTION CONTROL ACT, AND TO AUTHORIZE THE COASTAL RESOURCES COMMISSION AND LOCAL GOVERNMENTS TO CONSIDER THE PERFORMANCE HISTORY OF AN APPLICANT FOR A PERMIT REQUIRED BY THE COASTAL AREA MANAGEMENT ACT PRIOR TO APPROVING A PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-54(d) reads as rewritten:

"(d) In implementing the erosion and sedimentation control program, the Commission ~~is authorized and directed to:~~ shall:

(1) Assist and encourage local governments in developing erosion and sediment control programs and as part of such assistance to develop a model local erosion control

ordinance, and approve, approve as modified, or disapprove local plans submitted to it pursuant to G.S. 113A-60;

(2) Assist and encourage other State agencies in developing erosion and sedimentation control programs to be administered in their jurisdictions, and to approve, approve as modified, or disapprove such programs submitted pursuant to G.S. 113A-56 and from time to time review such programs for compliance with regulations issued by the Commission and for adequate enforcement;

(3) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of erosion control regulations, ordinances, and plans;

(4) Require submission of erosion control plans by those responsible for initiating land-disturbing activities for approval prior to commencement of the activities. ~~As to those activities requiring prior plan approval, the Commission must either approve or disapprove the plan within 30 days of receipt. The draft plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. Failure to approve or disapprove a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The Commission must approve or deny a revised plan within 15 days of receipt, or it is deemed to be approved.~~

~~If, following commencement of a land-disturbing activity pursuant to an approved plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require such revisions as are necessary to comply with this act. The Commission must approve or deny the revised plan within 15 days of receipt, or it is deemed to be approved.~~"

Sec. 2. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"*§ 113A-54.1. Approval of erosion control plans.*

(a) A draft erosion control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. The Commission must either approve or disapprove a draft erosion control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. Failure to approve or disapprove a completed draft erosion control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require such revisions of the plan as are necessary to comply with this Article. Failure to approve or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.

(c) The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(d) In the event that an erosion control plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and subsection (c) of this section, an applicant's record may be considered for only the two years prior to the application date."

Sec. 3. G.S. 113A-57(1) reads as rewritten:

"(1) No land-disturbing activity during periods of construction or improvement to land shall be ~~permitted in proximity to a lake or shall be~~ permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone ~~nearer~~ nearest the land-disturbing ~~activity, provided that this~~ activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision ~~(1)~~ shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse."

Sec. 4. G.S. 113A-61 reads as rewritten:

"§ *113A-61.* ~~*Approval of plans.*~~ *Local approval of erosion control plans.*

(a) Each local government's erosion and sediment control program shall require that for those land-disturbing activities requiring prior approval of an erosion control plan, such plan shall be submitted to the appropriate soil and water conservation district at the same time it is submitted to the local government for approval. The soil and water conservation district or districts, within 20 days after receipt of the proposed plan, or within such additional time as may be prescribed by the local government, shall review the plan and submit its comments and recommendations to the local government. Failure of the soil and water conservation district to submit its comments and recommendations within 20 days or within the prescribed additional time shall not delay final action on the proposed plan by the local government.

(b) Local governments shall review each erosion control plan submitted to them and within 30 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. A local government shall only approve a plan upon determining that it complies with all applicable State and local regulations for erosion and sediment control.

(b1) A local government may disapprove an erosion control plan upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(b2) In the event that an erosion control plan is disapproved by a local government pursuant to subsection (b1) of this section, the local government shall so notify the Director of the Division of Land Resources within 10 days of such disapproval. The local government shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of subsection (c) of this section, the applicant may appeal the local government's disapproval of the plan directly to the Commission. For purposes of this subsection and subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

(c) The disapproval or modification of any proposed erosion control plan by a local government shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. If the local government upholds the disapproval or modification of a proposed erosion control plan following the public hearing, the person submitting the erosion control plan shall be entitled to appeal the local government's action disapproving or modifying the plan to the Commission. The Commission, by regulation, shall direct the Secretary to appoint such employees of the Department as may be necessary to hear appeals from the disapproval or modification of erosion control plans by local governments. In addition to providing for the appeal of local government decisions disapproving or modifying erosion control plans to designated employees of the Department, the Commission shall designate an erosion control plan review committee consisting of three

members of the Commission. The person submitting the erosion control plan may appeal the decision of an employee of the Department who has heard an appeal of a local government action disapproving or modifying an erosion control plan to the erosion plan review committee of the Commission. Judicial review of the final action of the erosion plan review committee of the Commission may be had in the superior court of the county in which the local government is situated.

~~(d) With respect to approved plans for erosion control in connection with land-disturbing activities, the approving authority, either the Commission or a local government, shall provide for periodic inspections of the land-disturbing activity to insure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the certificate of approval for the plan. If the approving authority determines that the person engaged in the land-disturbing activities has failed to comply with the plan, the authority shall immediately serve upon that person by registered mail a notice to comply. The notice shall set forth the measures needed to come into compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activities fails to comply within the time specified, he shall be deemed in violation of this Article.~~"

Sec. 5. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"*§ 113A-61.1. Periodic inspection of land-disturbing activity.*

With respect to approved plans for erosion control in connection with land-disturbing activities, the approving authority, either the Commission or a local government, shall provide for periodic inspection of the land-disturbing activity to ensure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the certificate of approval for the plan. If the approving authority determines that the person engaged in the land-disturbing activities has failed to comply with the plan, the authority shall immediately serve upon that person by registered mail a notice to comply. The notice shall set forth the measures needed to come into compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activities fails to comply within the time specified, he shall be deemed in violation of this Article."

Sec. 6. G.S. 113A-64(a)(1) reads as rewritten:

"(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of not more than ~~one hundred dollars ($100.00),~~ five hundred dollars ($500.00), except that the penalty for failure to submit an erosion control plan shall be as provided in subdivision ~~(3)~~ (4) of this subsection. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation."

Sec. 7. G.S. 113A-120 as amended by Chapter 51 of the 1989 Session Laws reads as rewritten:

"§ *113A-120. Grant or denial of permits.*

(a) The responsible official or body shall deny an application for a permit upon finding:

(1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.

(2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).

(3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in ~~paragraphs a to c of subsection (b)(3) of G.S. 113A-113.~~ subdivisions a. through c. of G.S. 113A-113(b)(3).

(4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in ~~paragraphs a to h of subsection (b)(4) of G.S. 113A-113.~~ subdivisions a. through h. of G.S. 113A-113(b)(4).

(5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.

(6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in

~~paragraphs a to e of subsection (b)(6) [of G.S. 113A-113]~~ subdivisions a. through e. of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.

(7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.

(8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.

(9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.

(10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through ~~(9).~~ (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.

(b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures or agreeing to carry out whatever terms of operation or use of the development that are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and State laws, regulations, and rules for the protection of the environment.

(b2) For purposes of subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

~~(c) Variances. -- Any person may petition the Commission for a variance granting permission to use his land in a manner otherwise prohibited by rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. When it finds that (i) practical difficulties or unnecessary hardships would result from strict application of the guidelines, rules, standards, or other restrictions applicable to the property, (ii) such difficulties or hardships result from conditions which are peculiar to the property involved, (iii) such conditions could not reasonably have been anticipated when the applicable guidelines, rules, standards, or restrictions were adopted or amended, the Commission may vary or modify the application of the restrictions to the property so that the spirit, purpose, and intent of the restrictions are preserved, public safety and welfare secured, and substantial justice preserved. In granting a variance, the Commission may impose reasonable and appropriate conditions and safeguards upon any permit it issues. The Commission may conduct a hearing within 45 days from the receipt of the petition and shall notify such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.~~"

Sec. 8. Part 4 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"*§ 113A-120.1. Variances.*

Any person may petition the Commission for a variance granting permission to use his land in a manner otherwise prohibited by rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. When it finds that (i) practical difficulties or unnecessary hardships would result from strict application of the guidelines, rules, standards, or other restrictions applicable to the property, (ii) such difficulties or hardships result from conditions which are peculiar to the property involved, (iii) such conditions could not reasonably have been anticipated when the applicable guidelines, rules, standards, or restrictions were adopted or amended, the Commission may vary or modify the application of the restrictions to the property so that the

spirit, purpose, and intent of the restrictions are preserved, public safety and welfare secured, and substantial justice preserved. In granting a variance, the Commission may impose reasonable and appropriate conditions and safeguards upon any permit it issues. The Commission may conduct a hearing within 45 days from the receipt of the petition and shall notify such persons and agencies that may have an interest in the subject matter of the time and place of the hearing."

Sec. 9. This act shall apply to any erosion control plan and to any application for a permit under the Coastal Area Management Act submitted on or after 1 October 1989. Section 6 of this act shall apply to offenses occurring on or after 1 October 1989.

Sec. 10. This act is effective October 1, 1989.

In the General Assembly read three times and ratified this the 25th day of July, 1989.

H.B. 1565 **CHAPTER 677**

AN ACT TO INCREASE THE FEES FOR OUTDOOR ADVERTISING PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-133 reads as rewritten:

"§ *136-133. Permits required.*

No person shall erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules and regulations promulgated by the Department of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules and regulations promulgated by the Department of Transportation thereunder. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority to charge permit fees to defray the costs of administering the permit procedures under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-129.1(1) shall not exceed a

twenty dollar ($20.00) initial fee and a fifteen dollar ($15.00) annual renewal fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a ~~twenty dollar ($20.00)~~ sixty dollar ($60.00) initial fee and ~~a fifteen dollar ($15.00)~~ thirty dollar ($30.00) annual renewal fee."

Sec. 2. This act shall become effective September 1, 1989.

In the General Assembly read three times and ratified this the 25th day of July, 1989.

H.B. 982 **CHAPTER 678**

AN ACT TO PROVIDE THAT COMMERCIAL LOAN COMMITMENTS MUST BE IN WRITING.

The General Assembly of North Carolina enacts:

Section 1. Chapter 22 of the General Statutes is amended by adding a new section to read:

"*§ 22-5. Commercial loan commitments.*

No commercial loan commitment by a bank, savings and loan association, or credit union for a loan in excess of fifty thousand dollars ($50,000) shall be binding unless the commitment is in writing and signed by the party to be bound. As used in this section, the term 'commercial loan commitment' means an offer, agreement, commitment, or contract to extend credit primarily for business or commercial purposes and does not include charge or credit card accounts, personal lines of credit, overdrafts, or any other consumer account. Offers, agreements, commitments, or contracts to extend credit primarily for aquaculture, agricultural, or farming purposes are specifically exempted from the provisions of this section."

Sec. 2. This act shall become effective on October 1, 1989, and shall apply to commercial loan commitments entered into on and after such date.

In the General Assembly read three times and ratified this the 25th day of July, 1989.

S.B. 147 **CHAPTER 679**

AN ACT TO LIMIT CLAIMS TO VICTIM AND PERSONS WHO HELPED HIM, TO ALLOW THE NORTH CAROLINA CRIME VICTIM'S COMPENSATION COMMISSION AND ITS DIRECTOR AUTHORITY TO ADEQUATELY INVESTIGATE A CLAIM FOR COMPENSATION BY REQUIRING A VICTIM OR CLAIMANT TO PROVIDE NECESSARY MEDICAL AND PSYCHOLOGICAL INFORMATION, TO REQUIRE LAW

ENFORCEMENT TO COOPERATE WITH THE COMMISSION, TO ALLOW THE COMMISSION TO KEEP MEDICAL, LAW ENFORCEMENT, AND JUVENILE RECORDS CONFIDENTIAL, TO MAKE A TECHNICAL CORRECTION TO THE RULES OF EVIDENCE IN A CONTESTED CASE HEARING, TO ALLOW THE DIRECTOR TO NEGOTIATE WITH SERVICE PROVIDERS FOR A REDUCED RATE, AND TO PROVIDE FOR THE DIRECTOR TO PURSUE RESTITUTION FROM CONVICTED CRIMINALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15B-2(2) reads as rewritten:

"(2) 'Claimant' means any of the following persons who claims an award of compensation under this Chapter:

a. A victim;

b. A dependent of a deceased victim;

c. A third person ~~other than~~ who is not a collateral ~~source;~~ source and who provided benefit to the victim or his family other than in the course or scope of his employment, business, or profession;

d. A person who is authorized to act on behalf of a victim, a dependent, or a third person ~~who is not a collateral source.~~ described in subdivision c.

The claimant, however, may not be the offender or an accomplice of the offender who committed the criminally injurious conduct."

Sec. 2. G.S. 15B-6 reads as rewritten:

"§ *15B-6. Powers of the ~~Commission.~~ Commission and Director.*

(a) In addition to powers authorized by this Chapter and Chapter 150B, the Commission may:

(1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and Article 2 of Chapter 150B of the General Statutes necessary to carry out the purposes of this Chapter;

(2) Establish general policies and guidelines for awarding compensation and provide guidance to the staff assigned by the Secretary of the Department of Crime Control and Public Safety to administer the program;

(3) Accept for any lawful purpose and functions under this Chapter any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm, or corporation, and may deposit the same to the Crime Victims Compensation Fund.

(b) The Director shall have the following authority:

(1) With the consent of the district attorney, to request that law enforcement officers employed by the State or any political subdivision provide copies of any information or data gathered in the investigation of criminally injurious conduct that is the basis of any claim to enable the Director or Commission to determine whether, and the extent to which, a claimant qualifies for an award of compensation;

(2) With the consent of the district attorney, to request that prosecuting attorneys, law enforcement officers, and State agencies conduct investigations and provide information necessary to enable the Director or Commission to determine whether, and the extent to which, a claimant qualifies for an award of compensation; and

(3) To require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports pertaining to the injury for which the award of compensation is claimed.

Information obtained pursuant to this subsection is subject to the same privilege against public disclosure that may be asserted by the providing source."

Sec. 3. Chapter 15B of the General Statutes is amended by adding a new subsection to read:

"*§ 15B-8.1. Privilege and records of the Commission.*

(a) In a proceeding under this Chapter, the privileges set forth in G.S. 8-53, 8-53.3, 8-53.4, 8-53.7, 8-53.8, and 8-56 do not apply to communications or records concerning the physical, mental or emotional condition of the claimant or victim if that condition is relevant to a claim for compensation.

(b) All medical information relating to the mental, physical, or emotional condition of a victim or claimant and all law enforcement records and information and any juvenile records shall be held confidential by the Commission and Director. Except for information held confidential under this subsection, the records of the Division shall be open to public inspection."

Sec. 4. G.S. 15B-12(b) reads as rewritten:

"~~(b) There is no privilege, except the privileges arising from the attorney-client relationship and the North Carolina and United States Constitutions, as to communications or records that are relevant to the physical, mental, or emotional condition of the claimant or victim in a proceeding under this Chapter in which that condition is an element.~~

(b) In a proceeding under this Chapter, the privileges set forth in G.S. 8-53, 8-53.3, 8-53.4, 8-53.7, 8-53.8, and 8-56 do not apply to communications or records concerning the physical, mental or

emotional condition of the claimant or victim if that condition is relevant to a claim for compensation."

Sec. 5. G.S. 15B-12(f) reads as rewritten:

"(f) The administrative law judge may not request the victim or the claimant to supply any evidence that would not be admissible at a trial under ~~G.S. 8-58.6.~~ G.S. 8C-1, Rule 412."

Sec. 6. G.S. 15B-16 is amended by adding a new subsection to read:

"(e) The Director, even after an award made by the Commission, may negotiate with any service provider in order to obtain a reduction of the amount claimed by the provider in exchange for a full release of any claim against a claimant."

Sec. 7. G.S. 15B-18 is amended by adding a new subsection to read:

"(f) The Director may pursue any claim of the Crime Victim's Compensation Fund or the Commission set forth in this Chapter. At the request of the Director, or otherwise, the Attorney General is authorized to assert the rights of the Crime Victim's Compensation Fund or Commission before any administrative or judicial tribunal for purposes of enforcing a claim or right set forth in this Chapter."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1989.

S.B. 170 **CHAPTER 680**

AN ACT TO PROVIDE A DEFINITION OF MACHINE GUN AND SUBMACHINE GUN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-409 reads as rewritten:

"§ *14-409. Machine guns and other like weapons.*

(a) As used in this section, 'machine gun' or 'submachine gun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination of parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(b) It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like ~~weapons:~~ weapons as defined by

subsection (a) of this section: Provided, however, that this ~~section~~ subsection shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the sheriff of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States Army, when in discharge of their official duties, officers and soldiers of the militia and the State guard when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is located. Provided, further, ~~that automatic shotguns and pistols or other automatic weapons that shoot less than 31 shots shall not be construed to be or mean a machine gun or submachine gun under this section; and~~ that any bona fide resident of this State who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ~~ownership~~ ownership to the sheriff of the county in which said person lives.

(c) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than five hundred dollars ($500.00), or imprisoned for not less than six months, or both, in the discretion of the court."

Sec. 2. G.S. 14-409.9 reads as rewritten:

"§ *14-409.9. Machine guns and other like weapons.*

(a) As used in this section, 'machine gun' or 'submachine gun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination of parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(b) It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like ~~weapons:~~ weapons as defined by

subsection (a) of this section: Provided, however, that this ~~section~~ subsection shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the clerk of the superior court of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States Army, when in discharge of their official duties, officers and soldiers of the militia and the State guard when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is located. Provided, further, ~~that automatic shotguns and pistols or other automatic weapons that shoot less than 31 shots shall not be construed to be or mean a machine gun or submachine gun under this section; and~~ that any bona fide resident of this State who now owns a machine gun used in former wars as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the clerk of the superior court of the county in which said person lives.

(c) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than five hundred dollars ($500.00), or imprisoned for not less than six months, or both, in the discretion of the court."

Sec. 3. This act shall become effective October 1, 1989, and shall apply to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 26th day of July, 1989.

S.B. 497 **CHAPTER 681**

AN ACT TO MAKE VARIOUS SUBSTANTIVE AND TECHNICAL CHANGES IN THE BUILDING CODE LAWS.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 66 of the General Statutes reads as rewritten:

"ARTICLE 4.

"Electrical Materials, Devices, Appliances and Equipment.

"§ 66-23. *Sale of electrical goods regulated.*

Every person, firm or corporation before selling, offering for sale ~~or exposing for sale, at retail to the general public~~, assigning, or disposing of by gift as premiums or in any similar manner any electrical material, devices, appliances or equipment shall first determine if such electrical materials, devices, appliances and equipment comply with the provision of this Article.

"§ 66-24. *Identification Marks Required.*

All electrical materials, devices, appliances and equipment ~~offered for sale, exposed for sale at retail to the general public, or disposed of by gift as premiums or in any similar manner~~ shall have the maker's name, trademark, or other identification symbol placed thereon, together with such other markings giving voltage, current, wattage, or other appropriate ratings as may be necessary to determine the character of the material, device, appliance or equipment and the use for which it is intended; and it shall be unlawful for any person, firm or corporation to remove, alter, change or deface the maker's name, trademark or other identification symbol.

"§ 66-25. *Acceptable listings as to safety of goods.*

~~The electrical inspector shall accept, without further examination or test, the listings of Underwriters' Laboratories, Inc., as evidence of safety of such materials, etc., so long as the listing continues in effect to his knowledge and, so long as information and experience have not demonstrated, in his judgment, that any specific listed materials, etc., are not safe.~~

~~The electrical inspector may accept as evidence of safety of such materials, etc., not of types for which such Underwriters' Laboratories listings are in effect, such evidence by way of records of tests and examinations by bodies he deems properly qualified, as he deems necessary to assure him of the safety of such materials, etc. But such acceptance cannot be made to apply to other than the stock of materials, etc., for which such evidence has been specifically secured. One body whose evidence of safety shall be accepted by the electrical inspector for specific stocks is the Insurance Commission of the State of North Carolina, if the stock in question has been submitted to the examinations and tests required by that Commission, and that Commission has certified that in its judgment the stock conforms to the State law, to the requirements of this Article, and to any additional requirements deemed necessary for safety in the judgment of that Commission.~~

~~The electrical inspector may decline to accept any evidence of safety other than that provided by Underwriters' Laboratories listings, for specific materials, etc., of types for which such listings are available.~~

~~The electrical inspector, in accepting listings of Underwriters' Laboratories, shall keep in file as far as practicable, copies of all Underwriters' Laboratories listings in effect, and copies of the recorded standards, requirements, tests and examinations of Underwriters' Laboratories for such materials, etc., or shall when necessary refer to the files of such information maintained by the Insurance Commission of North Carolina. The words "electrical inspector" when used in this Article shall be construed to refer to any duly licensed and employed electrical inspector of the State or any governmental agency thereof.~~

All electrical materials, devices, appliances, and equipment shall be evaluated for safety and suitability for intended use. This evaluation shall be conducted in accordance with nationally recognized standards and shall be conducted by a qualified testing laboratory. The Commissioner of Insurance, through the Engineering Division of the Department of Insurance, shall implement the procedures necessary to approve suitable national standards and to approve suitable qualified testing laboratories. The Commissioner may assign his authority to implement the procedures for specific materials, devices, appliances, or equipment to other agencies or bodies when they would be uniquely qualified to implement those procedures.

In the event that the Commissioner determines that electrical materials, devices, appliances, or equipment in question cannot be adequately evaluated through the use of approved national standards or by approved qualified testing laboratories, the Engineering Division of the Department of Insurance shall specify any alternative evaluations which safety requires.

The Engineering Division of the Department of Insurance shall keep in file, where practical, copies of all approved national standards and resumes of approved qualified testing laboratories.

"§ 66-26. *Legal responsibility of proper installations unaffected.*

This Article shall not be construed to relieve from or to lessen the responsibility or liability of any party owning, operating, controlling or installing any electrical materials, devices, appliances or equipment for damages to persons or property caused by any defect therein, nor shall the electrical inspector, the Commissioner, or agents of the Commissioner be held as assuming any such liability by reason of the approval of any material, device, appliance or equipment authorized herein.

"§ 66-27. *Violation made misdemeanor.*

Any person, firm or corporation who shall violate any of the provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ~~fifty~~

~~dollars ($50.00) or~~ five hundred dollars ($500.00), imprisonment for not more than ~~30~~ 90 days, or both, for each violation.

"§ *66-27A. Enforcement.*

The Commissioner or his designee or the electrical inspector of any State or local governing agency may initiate any appropriate action or proceedings to prevent, restrain, or correct any violation of this Article. The Commissioner or his designee, upon showing proper credentials and in discharge of his duties pursuant to this Article may, at reasonable times and without advance notice, enter and inspect any facility within the State in which there is reasonable cause to suspect that electrical materials, devices, appliances, or equipment not in conformance with the requirements of this Article are being sold, offered for sale, assigned, or disposed of by gift, as premiums, or in any other similar manner."

Sec. 2. G.S. 143-138(b), as rewritten by Chapter 25, Session Laws of 1989, reads as rewritten:

"(b) Contents of the Code. -- The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; regulations governing construction and precautions to be taken during construction; regulations as to permissible materials, loads, and stresses; regulations of chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; regulations governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules and regulations pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e).

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building regulations applicable to farm buildings located outside the building-regulation jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any boiler regulations adopted by the Board of Boiler Rules,
(2) Any elevator regulations relating to safe operation adopted by the Commissioner of Labor, and
(3) Any regulations relating to sanitation adopted by the Department of Human Resources which the Building Code Council believes pertinent.

In addition, the Code may include references to such other regulations of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No regulations issued by other agencies than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilitization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including

without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain regulations concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements."

Sec. 3. G.S. 143-138(f) is repealed.

Sec. 4. G.S. 143-140 reads as rewritten:

"*§ 143-140. Hearings before enforcement agencies as to questions under Building Code.*

Any person desiring to raise any question under this Article or under the North Carolina State Building Code shall be entitled to a ~~full hearing before~~ technical interpretation from the appropriate enforcement agency, as designated in the preceding section. Upon request in writing by any such person, the enforcement agency ~~shall appoint a time for the hearing, giving such person reasonable notice thereof. The enforcement agency,~~ through an appropriate official~~, shall conduct a full and complete hearing of the matters in controversy and make a determination thereof~~ shall within a reasonable time ~~thereafter. The person requesting the hearing shall, upon request, be furnished~~ provide a written ~~statement of the decision~~ interpretation, setting forth the facts found, the decision reached, and the reasons therefor. In the event of dissatisfaction with such decision, the person affected shall have the options ~~of~~ of:

(1) Appealing to the Building Code Council or

(2) Appealing directly to the ~~superior court,~~ Superior Court, as provided in G.S. 143-141."

Sec. 5. G.S. 153A-361 reads as rewritten:

"*§ 153A-361. Stop orders.*

Whenever a building or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of a State or local building law or local building ordinance or regulation, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or that presents such a hazard to be immediately stopped. The stop order shall be in writing and directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within five days after the day the order is issued. The owner or builder shall give to the Commissioner of Insurance or his designee written notice of

appeal, with a copy to the local inspector. The Commissioner or his designee shall promptly conduct ~~a hearing at which the~~ an investigation and the appellant and the inspector shall be permitted to submit relevant evidence. ~~, and the~~ The Commissioner or his designee shall ~~rule on the appeal~~ as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his designee on an appeal, no further work may take place in violation of a stop order. ~~Appeals from a stop order based on violations of any other local ordinance relating to buildings shall be taken to the local official designated by that ordinance and shall be taken, heard, and decided in the same manner as prescribed herein for appeals to the Commissioner.~~ In the event of dissatisfaction with the decision, the person affected shall have the options of:

(1) Appealing to the Building Code Council, or

(2) Appealing to the Superior Court as provided in G.S.143-141.

Violation of a stop order constitutes a misdemeanor."

Sec. 6. G.S. 160A-421 reads as rewritten:

"§ *160A-421. Stop orders.*

Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within five days after the day the order is issued. The owner or builder shall give to the Commissioner of Insurance or his designee written notice of appeal, with a copy to the local inspector. The Commissioner or his designee shall promptly conduct ~~a hearing at which the~~ an investigation and the appellant and the inspector shall be permitted to submit relevant evidence. ~~, and the~~ The Commissioner or his designee shall ~~rule on the appeal~~ as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his designee on an appeal, no further work may take place in violation of a stop

order. ~~Appeals from a stop order based on violations of any other local ordinance relating to buildings shall be taken to the local official designated by that ordinance and shall be taken, heard, and decided in the same manner as prescribed herein for appeals to the Commissioner.~~ In the event of dissatisfaction with the decision, the person affected shall have the options of:

(1) Appealing to the Building Code Council, or

(2) Appealing to the Superior Court as provided in G.S. 143-141.

Violation of a stop order shall constitute a misdemeanor."

Sec. 7. G.S. 153A-374 reads as rewritten:

"§ *153A-374. Appeals.*

Unless otherwise provided by law, any appeal from an order, decision, or determination of a member of a local inspection department pertaining to the State Building Code or any other State building law shall be taken to the Commissioner of Insurance or his designee or other official specified in G.S. 143-139, by filing a written notice with him and with the inspection department within 10 days after the day of the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law."

Sec. 7A. G.S. 160A-434 reads as rewritten:

"§ *160A-434. Appeals in general.*

Unless otherwise provided by law, appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws shall be taken to the Commissioner of Insurance or his designee or other official specified in G.S. 143-139, by filing a written notice with him and with the inspection department within a period of 10 days after the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law."

Sec. 8. G.S. 160A-436 reads as rewritten:

"§ *160A-436. Restrictions within primary fire limits.*

Within the primary fire limits of any city, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall hereafter be erected, altered, repaired, or moved (either into the limits or from one place to another within the limits), except upon the permit of the local inspection department approved by the city council and by the Commissioner of Insurance or his designee. The city council may make additional regulations for the prevention, extinguishment, or mitigation of fires within the primary fire limits."

Sec. 9. G.S. 143-138(c) reads as rewritten:

"(c) Standards to Be Followed in Adopting the Code. -- All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed liberally to those ends. Requirements of the Code shall conform to good engineering practice, as evidenced generally by the requirements of the National Building Code of the American Insurance Association, formerly the National Board of Fire Underwriters, the Southern Standard Building Code of the Southern Building Code Congress, the Uniform Building Code of the Pacific Coast Building Officials Conference, the Basic Building Code of the Building Officials Conference of America, Inc., the National Electric Code, the Life Safety Code~~, formerly Building Exits Code~~ and Fire Prevention Code of the National Fire Protection Association, the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, the Boiler Code of the American Society of Mechanical Engineers, Standards of the American Insurance Association for the Installation of Gas Piping and Gas Appliances in Buildings, and standards promulgated by the United States of America Standards Institute, formerly the American Standards Association, Underwriters' Laboratories, Inc., and similar national agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety."

Sec. 10. G.S. 143-138(e) reads as rewritten:

"(e) Effect upon Local Codes. -- The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a building code or building rules and regulations governing construction or a fire prevention code within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality; county jurisdiction shall include all other areas of the county. No such ~~building~~ code or regulations, other than those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. While it remains effective, such approval shall be taken as conclusive evidence that a local code or local regulations supersede the State Building Code in its particular political subdivision. Whenever the Building Code Council adopts an amendment to the State Building Code, it shall consider any previously approved local regulations dealing with the same general matters, and it shall have authority to withdraw its

approval of any such local code or regulations unless the local governing body makes such appropriate amendments to that local code or regulations as it may direct. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved."

Sec. 11. G.S. 143-139(b) reads as rewritten:

"(b) General Building Regulations. -- The Insurance Commissioner shall have general supervision, through the Division of Engineering of the Department of Insurance, of the administration and enforcement of all sections of the North Carolina State Building Code pertaining to plumbing, electrical systems, general building restrictions and regulations, heating and air conditioning, fire protection, and the construction of buildings generally, except those sections of the Code, the enforcement of which is specifically allocated to other agencies by subsections (c) and (d) below. The Insurance Commissioner, by means of the Division of Engineering, shall exercise his duties in the enforcement of the North Carolina State Building Code (including local building codes which have superseded the State Building Code in a particular political subdivision pursuant to G.S. 143-138(e)) in cooperation with local officials and local inspectors duly appointed by the governing body of any municipality or board of county commissioners pursuant to ~~Article 11, Chapter 160 of the General Statutes of North Carolina, or G.S. 160-200(29), or G.S. 153-9(47) and (52)~~ Part 5 of Article 19 of Chapter 160A of the General Statutes or Part 4 of Article 18 of Chapter 153A of the General Statutes, or any other applicable statutory authority."

Sec. 12. G.S. 115C-525(b) reads as rewritten:

"(b) Inspection of Schools for Fire Hazards; Removal of Hazards. -- Every public school building in the State shall be inspected ~~every four months~~ a minimum of two times during the year in accordance with the following plan: Provided, that the periodic inspections herein required shall be at least ~~90~~ 120 days apart:

(1) Each school building shall be inspected to make certain that none of the fire hazards enumerated in G.S. 115C-525(a)(1) through (5) exist, and to ~~insure~~ ensure that the building and all heating, mechanical, electrical, gas, and other equipment and appliances are properly installed and maintained in a safe and serviceable manner as prescribed by the North

Carolina Building Code. Following each inspection, the persons making the inspection shall furnish to the principal of the school a written report of conditions found during inspection, upon forms furnished by the Commissioner of Insurance, and the persons making the inspection shall also furnish a copy of the report to the superintendent of schools; the superintendent shall keep such copy on file for a period of three years. In addition to the periodic inspections herein required, any alterations or additions to existing school buildings or to school building utilities or appliances shall be inspected immediately following completion.

(2) The board of county commissioners of each county shall designate the persons to make the inspections and reports required by subdivision (1) of this subsection. The board may designate any city or county building inspector, any city or county fire prevention bureau, any city or county electrical inspector, the county fire marshal, or any other qualified persons, but no person shall make any ~~electrical~~ inspection unless he shall be qualified as required by G.S. 153A-351.1 and Section 7 of Chapter 531 of the 1977 Session Laws. Nothing in this section shall be construed as prohibiting two or more counties from designating the same persons to make the inspections and reports required by subdivision (1) of this subsection. The board of county commissioners shall compensate or provide for the compensation of the persons designated to make all such inspections and reports. The board of county commissioners may make appropriations in the general fund of the county to meet the costs of such inspections, or in the alternative the board may add appropriations to the school current expense fund to meet the costs thereof: Provided, that if appropriations are added to the school current expense fund, such appropriations shall be in addition to and not in substitution of existing school current expense appropriations.

(3) It shall be the duty of the Commissioner of Insurance, the Superintendent of Public Instruction, and the State Board of Education to prescribe any additional rules and regulations which they may deem necessary in connection with such inspections and reports for the reduction of fire hazards and protection of life and property in public schools.

(4) It shall be the duty of each principal to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this

subsection are immediately removed or corrected, if such removal or correction can be accomplished by the principal. If such removal or correction cannot be accomplished by the principal, it shall be the duty of the principal to bring the matter to the attention of the superintendent.

(5) It shall be the duty of each superintendent of schools to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this subsection and not removed or corrected by the principals as required by subdivision (4) of this subsection are removed or corrected, if such removal or correction can be brought about within the current appropriations available to the superintendent. Where any removal or correction of a hazard will require the expenditure of funds in excess of current appropriations, it shall be the duty of the superintendent to bring the matter to the attention of the appropriate board of education, and the board of education in turn shall bring the same to the attention of the board of county commissioners, in order that immediate steps be taken, within the framework of existing law, to remove or correct the hazard."

Sec. 13. G.S. 160A-292 reads as rewritten:

"§ *160A-292. Duties of fire chief.*

Where not otherwise prescribed, the duties of the fire chief shall be to preserve and care for fire apparatus, have charge of fighting and extinguishing fires and training the fire department, seek out and have corrected all places and conditions dangerous to the safety of the city and its citizens from fire, and make annual reports to the council concerning these duties. If these duties include State Building Code enforcement, they shall follow the provisions as defined in G.S. 143-151.13."

Sec. 14. G.S. 153A-235 is repealed.

Sec. 15. G.S. 143-151.8(a) reads as rewritten:

"(a) As used in this Article, unless the context otherwise requires:

(1) 'Board' means the North Carolina Code Officials Qualification Board.

(2) 'Code' means the North Carolina State Building Code and related local building rules approved by the Building Code Council heretofore or hereinafter enacted, adopted or approved pursuant to G.S. 143-138.

(3) 'Code enforcement' means the examination and approval of plans and specifications, or the inspection of the manner of construction, workmanship, and materials for construction of buildings and structures and components thereof, or the

enforcement of fire code regulations as an employee of the State or local government, except an employee of the State Department of Labor engaged in the administration and enforcement of those sections of the Code which pertain to boilers and elevators, to assure compliance with the State Building Code and related local building rules.

(4) 'Local inspection department' means the agency or agencies of local government with authority to make inspections of buildings and to enforce the Code and other laws, ordinances, and rules enacted by the State and the local government which establish standards and requirements applicable to the construction, alteration, repair, or demolition of buildings, and conditions that may create hazards of fire, explosion, or related hazards.

(5) 'Qualified Code-enforcement official' means a person qualified under this Article to engage in the practice of Code enforcement."

Sec. 16. G.S. 143-151.9(a)(14) reads as rewritten:

"(14) ~~Two members who are citizens~~ One member who is a local government fire prevention inspector and one member who is a citizen of the State."

Sec. 17. G.S. 143-151.13(c) reads as rewritten:

"(c) A Code-enforcement official holding office as of the date specified in this subsection for the county or municipality by which he is employed, shall not be required to possess a standard certificate as a condition of tenure or continued employment but shall be required to complete such in-service training as may be prescribed by the Board. At the earliest practicable date, such official shall receive from the Board a limited certificate qualifying him to engage in Code enforcement at the performance level and within the governmental jurisdiction in which he is employed. The limited certificate shall be valid only as an authorization for the official to continue in the position he held on the applicable date and shall become invalid if he does not complete in-service training within two years following the applicable date in the schedule below, according to the governmental jurisdiction's population as published in the 1970 U.S. Census:

Counties and Municipalities over 75,000 population -- July 1,1979

Counties and Municipalities between 50,001 and 75,000 -- July 1, 1981

Counties and Municipalities between 25,001 and 50,000 -- July 1, 1983

Counties and Municipalities 25,000 and under -- July 1, ~~1985.~~ 1985

All fire prevention inspectors holding office -- July 1, 1989.

An official holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position."

Sec. 18. G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	~~3~~ 1
~~State Board of Education~~	~~2~~
Attorney General (Library)	~~5~~ 1
Commissioner of Agriculture	1
Commissioner of Labor	~~3~~ 1
Commissioner of Insurance	~~5~~ 1
~~Department of Human Resources [Commission for Health Services]~~	~~10~~
Department of Human Resources ~~[Commission for Medical Facility Services and Licensure]~~	~~3~~ 1
Board of Transportation	~~3~~ 1
~~Adjutant General~~	~~1~~
Utilities Commission	1
Department of Administration	~~3~~ 1
~~Department of Conservation and Development~~	~~3~~
~~Department of Human Resources [Social Serices Commission]~~	~~7~~
~~Justices of the Supreme Court~~	~~1 each~~
Clerk of the Supreme Court	1
~~Judges of the Court of Appeals~~	~~1 each~~
Clerk of the Court of Appeals	1
~~Judges~~ Clerk of the Superior Court	* 1 each

~~Emergency Judges of the Superior Court~~	~~*~~	~~1 each~~
~~Special Judges of the Superior Court~~	~~*~~	~~1 each~~
~~Solicitors of the Superior Court~~	~~*~~	~~1 each~~
Department of Cultural Resources		
[State Library]		~~2~~ 5
Supreme Court Library		2
~~State Senators~~	~~*~~	~~1 each~~
~~Representatives of General Assembly~~	~~*~~	~~1 each~~
Legislative ~~Building~~ Library		1
~~Other state-supported institutions, at the discretion of the Council~~	~~*~~	~~1 each~~
Schools		
~~University of North Carolina at Chapel Hill~~	~~*~~	~~25~~
~~North Carolina State University at Raleigh~~	~~*~~	~~15~~
~~North Carolina Agricultural and Technical State University~~	~~*~~	~~5~~
All ~~other~~ state-supported colleges and universities in the State of North Carolina	*	1 each
Local Officials		
Clerks of the Superior Courts		1 each
~~Registers of Deeds of the Counties~~	~~*~~	~~1 each~~
~~Chairman of the Boards of County Commissioners~~	~~*~~	~~1 each~~
~~City Clerk of each incorporated municipality~~		~~1 each~~
Chief Building Inspector of each incorporated municipality or county	~~*~~	1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

Sec. 19. G.S. 143-138(a) reads as rewritten:

"§ *143-138. North Carolina State Building Code.*

(a) Preparation and Adoption. -- The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing ~~in the City of Raleigh~~. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary."

Sec. 20. G.S. 143-143.2 reads as rewritten:

"§ *143-143.2. Electric wiring of ~~houses.~~ houses, buildings, and structures.*

The electric wiring of houses or buildings for lighting or for other purposes shall conform to the requirements of the State Building Code, which includes the National Electric Code and any amendments and supplements thereto as adopted and approved by the State Building Code Council, and any other applicable State and local laws. In order to protect the property of citizens from the dangers incident to defective electric wiring of buildings, it shall be unlawful for any firm or corporation to allow any electric current for use in any newly erected building to be turned on without first having had an inspection made of the wiring by the appropriate official electrical inspector or inspection department and having received from that inspector or department a certificate approving the wiring of such building. It shall be unlawful for any person, firm, or corporation engaged in the business of selling electricity to furnish initially any electric current for use in any building, unless said building shall have first been inspected by the appropriate official electrical inspector or inspection department and a certificate given as above provided. In the event that there is no legally appointed inspector or inspection department with jurisdiction over the property involved, the two preceding sentences shall have no force or effect. As used in this section, 'building' includes any structure."

Sec. 21. Section 10 and Sections 14 through 17 shall become effective upon the adoption of fire protection code provisions by the North Carolina Building Code Council.

Sec. 22. This act shall become effective September 1, 1989.

In the General Assembly read three times and ratified this the 26th day of July, 1989.

S.B. 566 **CHAPTER 682**

AN ACT TO REPEAL THE REQUIREMENT THAT LIENHOLDERS OF RECORD FILE A REQUEST IN ORDER TO RECEIVE NOTICE OF AN IN REM TAX FORECLOSURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-375(c), as amended by Section 7 of Chapter 37, Session Laws of 1989, reads as rewritten:

"(c) Notice Listing Taxpayer and Others. -- The tax collector filing the certificate provided for in subsection (b), above, shall, at least 30 days prior to docketing the judgment, send a registered or certified letter, return receipt requested, to the listing taxpayer at his last known address, and to all lienholders of record who have a lien against the

listing taxpayer or against any subsequent owner of the property (including any liens referred to in the conveyance of the property to the listing taxpayer or to the subsequent owner of the property), ~~who have filed with the office of the tax collector of the taxing unit or units in which the real property subject to his lien is located a request that he be notified of the docketing of a judgment under the procedure set forth in this section,~~ stating that the judgment will be docketed and that execution will be issued thereon in the manner provided by law. A notice stating that the judgment will be docketed and that execution will be issued thereon shall also be mailed by certified or registered mail, return receipt requested, to the current owner of the property (if different from the listing owner) if: (i) a deed or other instrument transferring title to and containing the name of the current owner was recorded in the office of the register of deeds or filed or docketed in the office of the clerk of superior court after January 1 of the first year in which the property was listed in the name of the listing owner, and (ii) the tax collector can obtain the current owner's mailing address through the exercise of due diligence. ~~The request from the lienholder shall be made on a form supplied by the tax collector and shall describe the real property, indicate whose name it is listed in for taxation, and state the name and mailing address of the lienholder.~~ If within 10 days following the mailing of said letters of notice, a return receipt has not been received by the tax collector indicating receipt of the letter, then the tax collector shall have a notice published in a newspaper of general circulation in said county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the listing taxpayer that a judgment will be docketed against the listing taxpayer. The notice shall contain the proposed date of such docketing, that execution will issue thereon as provided by law, a brief description of the real property affected, and notice that the lien may be paid off prior to judgment being entered. All costs of mailing and publication, plus a charge of fifty dollars ($50.00) to defray administrative costs, shall be added to the amount of taxes that are a lien on the real property and shall be paid by the taxpayer to the taxing unit at the time the taxes are collected or the property is sold."

Sec. 2. This act shall become effective October 1, 1989, and applies to foreclosure proceedings begun on or after that date.

In the General Assembly read three times and ratified this the 26th day of July, 1989.

S.B. 886 **CHAPTER 683**

AN ACT TO PERMIT DEBTORS OF JUDGMENT DEBTORS TO RESPOND TO COURT SUMMONS BY VERIFIED ANSWERS TO INTERROGATORIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-360 reads as rewritten:

"§ *1-360. Debtors of judgment debtor, summoned.*

After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon affidavit that any person or corporation has property of said judgment debtor, or is indebted to him in an amount exceeding ten dollars ($10.00), the court or judge may, by order, require such person or corporation, or any officer or members thereof, to appear at a specified time and place, and answer concerning the ~~same.~~ same; provided, however, that such inquiries may be answered by such person or corporation, or any officers or members thereof, by verified answers to interrogatories. The court or judge may also, in its or his discretion, require notice of the proceeding to be given to any party to the action, in such manner as seems proper."

Sec. 2. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 26th day of July, 1989.

S.B. 902 **CHAPTER 684**

AN ACT TO AMEND CHAPTER 31B OF THE GENERAL STATUTES REGARDING RENUNCIATION OF PROPERTY AND RENUNCIATION OF FIDUCIARY POWERS.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 31B of the General Statutes reads as rewritten:

"Chapter 31B.

"Renunciation of ~~Transfers by Will, Intestacy, Appointment or Insurance Contract Act.~~ Property and Renunciation of Fiduciary Powers Act."

Sec. 2. G.S. 31B-1(a) reads as rewritten:

"(a) A person who succeeds to a property interest as:

(1) Heir, or

(2) Next of kin, or

(3) Devisee, or

(4) Legatee, or

(5) Beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the insured, or

(6) Person succeeding to a renounced interest, or

(7) Beneficiary under a testamentary trust or under an *inter vivos* ~~trust which takes under a will,~~ trust, or

(8) Appointee under a power of appointment exercised by a testamentary ~~instrument,~~ instrument or a nontestamentary instrument, or

~~(9) The duly authorized or appointed guardian with the prior or subsequent approval by the clerk of superior court, or by the resident judge of the superior court of any of the above, or~~

(9a) Surviving joint tenant, surviving tenant by the entireties, or surviving tenant of a tenancy with a right of survivorship, or

(9b) Person entitled to share in a testator's estate under the provisions of G.S. 31-5.5, or

(9c) Beneficiary under any other testamentary or nontestamentary instrument, including a beneficiary under:

a. Any qualified or nonqualified deferred compensation, employee benefit, retirement or death benefit, plan, fund, annuity, contract, policy, program or instrument, either funded or unfunded, which is established or maintained to provide retirement income or death benefits or results in, or is intended to result in, deferral of income;

b. An individual retirement account or individual retirement annuity; or

c. Any annuity, payable on death, account, or other right to death benefits arising under contract; or

(9d) The duly authorized or appointed guardian with the prior or subsequent approval of the clerk of superior court, or of the resident judge of the superior court, of any of the above.

(10) The personal representative appointed under Chapter 28A of any of the above,

or the attorney-in-fact of any of the above may renounce in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. Provided, however, there shall be no right of partial renunciation if the decedent or donee of the power expressly so provided in the instrument creating the interest."

Sec. 3. Chapter 31B of the General Statutes is amended by adding a new section to read:

"*§ 31B-1A. Right to renounce fiduciary powers.*

(a) Except as otherwise provided in the testamentary or nontestamentary instrument, a fiduciary under a testamentary or nontestamentary instrument may renounce, in whole or in part, fiduciary rights, privileges, powers, and immunities by executing and by delivering, filing, or recording a written renunciation pursuant to the provisions of G.S. 31B-2. A fiduciary may not renounce the rights of beneficiaries unless the instrument creating the fiduciary relationship authorizes such a renunciation.

(b) The instrument of renunciation shall (i) describe any fiduciary right, power, privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof, and (iii) be signed and acknowledged by the fiduciary authorized to renounce."

Sec. 4. G.S. 31B-2 reads as rewritten:

"*§ 31B-2. Time and place of filing renunciation.*

(a) An instrument renouncing a present interest shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect for federal estate tax purposes. If there is no such federal statute the instrument shall be filed not later than ~~seven~~ nine months after the death of the decedent or donee of the power.

(b) An instrument renouncing a future interest shall be filed not later than six months after the event by which the taker of the property or interest is finally ascertained and his interest indefeasibly vested and he is entitled to possession.

(c) The renunciation shall be filed with the clerk of court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If the property interest renounced includes any proceeds of a life insurance policy being renounced pursuant to G.S. 31B-1(a)(5) the person renouncing shall mail, by registered or certified mail, a copy of the renunciation to the insurance company issuing the policy. If the property or property interest renounced is created by nontestamentary instrument, a copy of the renunciation shall be delivered in person, or mailed by registered or certified mail, to the trustee or other person who has legal title to, or possession of, the property or property interest renounced.

(d) If real property or an interest therein is renounced, a copy of the renunciation shall also be filed for recording in the office of the register of deeds of all counties wherein any part of the interest renounced is situated. The renunciation shall be indexed in the grantor's index under (i) the name of the deceased owner or donee of the power, and (ii) the name of the person renouncing. The renunciation of an interest, or a part thereof, in real property shall not be effective to renounce such interest until a copy of the renunciation is filed for recording in the office of the register of deeds in the county wherein such interest or part thereof is situated. A spouse of a person renouncing real property or an interest in real property shall have no statutory dower, inchoate marital rights, or any other interest in the real property or real property interest renounced."

Sec. 5. G.S. 31B-3(a) reads as rewritten:

"(a) Unless the decedent or donee of the power has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as if the renouncer had predeceased the decedent or, if the renouncer is designated to take under a power of appointment exercised by a testamentary instrument, as if the renouncer had predeceased the donee of the ~~power.~~ power, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, as if the fiduciary right, power, privilege, or immunity never existed. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the renouncer had predeceased the decedent or the donee of the power. A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power."

Sec. 6. G.S. 31B-4 reads as rewritten:

"*§ 31B-4. Waiver and bar.*

(a) The right to renounce property or an interest therein is barred ~~by~~ by:

(1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor by the person authorized to renounce,

(2) A written waiver of the right to renounce,

(3) An acceptance of the property or interest or benefit thereunder, or

(4) A sale of the property or interest under judicial sale made before the renunciation is effected.

(b) The renunciation or the written waiver of the right to renounce is binding upon the renouncer or person waiving and all persons claiming through or under him.

(c) A fiduciary's application for appointment or assumption of duties as fiduciary does not waive or bar the fiduciary's right to renounce a right, power, privilege, or immunity.

(d) No person shall be liable for distributing or disposing of property in reliance upon the terms of a renunciation that is invalid for the reason that the right of renunciation has been waived or barred, if the distribution or disposition is otherwise proper, and the person has no actual knowledge of the facts that constitute a waiver or bar to the right of renunciation."

Sec. 7. G.S. 31B-5 reads as rewritten:

"*§ 31B-5. Exclusiveness of remedy.*

This Chapter does not exclude or abridge ~~the right of a person~~ any other rights or procedures existing under any other statute or otherwise provided by law to waive, release, refuse to accept, disclaim or renounce property or an interest ~~therein under any other statute or as otherwise provided by law.~~ therein, or any fiduciary right, power, privilege, or immunity."

Sec. 8. This act shall become effective October 1, 1989, and shall apply to any renunciation made on or after that date.

In the General Assembly read three times and ratified this the 26th day of July, 1989.

H.B. 836 **CHAPTER 685**

AN ACT TO CHANGE THE ELECTION DATE FOR THE ROCKINGHAM COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 115C-37, or any other provision of law, elections for the Rockingham County Board of Education shall be conducted on a nonpartisan basis and the results determined by a plurality as provided by G.S. 163-292. The elections shall be conducted on the same date as the election for county offices as provided by G.S. 163-1, the date in even-numbered years. The elections, including provisions for dates for candidate filing, shall be conducted in accordance with the provisions of Subchapter IX of Chapter 163 of the General Statutes.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1989.

H.B. 2037 **CHAPTER 686**

AN ACT TO EXTEND THE TIME DURING WHICH THE DAVIDSON BOARD OF EQUALIZATION AND REVIEW MAY SIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-322(e) reads as rewritten:

"(e) Time of Meeting. -- Each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. The board shall complete its duties on or before the third Monday following its first meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. In no event shall the board sit later than ~~July 1~~ December 31 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below."

Sec. 2. This act applies to Davidson County only and applies to any board charged with the duties of a board of equalization and review in Davidson County.

Sec. 3. This act is effective upon ratification and will expire December 31, 1989.

In the General Assembly read three times and ratified this the 26th day of July, 1989.

S.B. 483 **CHAPTER 687**

AN ACT TO AMEND THE NORTH CAROLINA WAGE AND HOUR ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 2A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"*§ 95-25.7A. Wages in dispute.*

(a) If the amount of wages is in dispute, the employer shall pay the wages, or that part of the wages, which the employer concedes to be due without condition, within the time set by this Article. The employee retains all remedies that the employee might otherwise be

entitled to regarding any balance of wages claimed by the employee, including those remedies provided under this Article.

(b) Acceptance of a partial payment of wages under this section by an employee does not constitute a release of the balance of the claim. Further, any release of the claim required by an employer as a condition of partial payment is void."

Sec. 2. G.S. 95-25.14 reads as rewritten:

"*§ 95-25.14. Exemptions.*

(a) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), G.S. 95-25.5 (Youth Employment), and G.S. 95-25.15(b) (Record Keeping) as it relates to these exemptions do not apply to:

(1) Any person or establishment required to comply with or subject to the regulation of wages, overtime, child labor and related record keeping under the Fair Labor Standards Act, ~~except as~~ except:

a. As otherwise specifically provided in G.S. 95-25.5; and;

b. That any employee other than a learner, apprentice student, or handicapped worker as defined in the Fair Labor Standards Act who is not otherwise exempt under the other provisions of this section, and for whom the applicable minimum wage under the Fair Labor Standards Act is less than the minimum wage provided in G.S. 95-25.3, is not exempt from the provisions of G.S. 95-25.3 or G.S. 95-25.4;

(2) Any person employed in agriculture, as defined under the Fair Labor Standards Act;

(3) Any person employed as a domestic, including baby sitters and companions, as defined under the Fair Labor Standards Act;

(4) Any person employed as a page in the North Carolina General Assembly or in the Governor's Office;

(5) Bona fide volunteers in medical, educational, religious, or nonprofit organizations where an employer-employee relationship does not exist;

(6) Persons confined in and working for any penal, correctional or mental institution of the State or local government;

(7) Any person employed as a model, or as an actor or performer in motion pictures or theatrical, radio or television productions, as defined under the Fair Labor Standards Act, except as otherwise specifically provided in G.S. 95-25.5;

(8) Any person employed by an outdoor drama in a production role, including lighting, costumes, properties and special

effects, except as otherwise specifically provided in G.S. 95-25.5; but this exemption does not include such positions as office workers, ticket takers, ushers and parking lot attendants.

(b) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), and G.S. 95-25.15(b) (Record Keeping) as it relates to these exemptions do not apply to:

(1) Any employee of a boys' or girls' summer camp or of a seasonal religious or nonprofit educational conference center;

(2) Any person employed in the catching, processing or first sale of seafood, as defined under the Fair Labor Standards Act;

(3) The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina;

(4) Any person employed in a bona fide executive, administrative, professional or outside sales capacity, as defined under the Fair Labor Standards Act;

~~(5) Any person employed in an enterprise that does not have three or more employees in any workweek;~~

(6) Any person while participating in a ridesharing arrangement as defined in G.S. 136-44.21.

(c) The provisions of G.S. 95-25.4 (Overtime) and G.S. 95-25.15(b) (Record Keeping) as it relates to this exemption do not apply to:

(1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair Labor Standards Act;

(2) Taxicab drivers;

(3) Seamen, employees of railroads, and employees of air carriers, as defined under the Fair Labor Standards Act;

(4) Salespersons, mechanics and partsmen employed by automotive, truck, and farm implement dealers, as defined under the Fair Labor Standards Act;

(5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under the Fair Labor Standards Act;

(6) Live-in child care workers or other live-in employees in homes for dependent children;

(7) Radio and television announcers, news editors, and chief engineers, as defined under the Fair Labor Standards Act.

(d) The provisions of this Article do not apply to the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, except for the following provisions, which do apply:

(1) The minimum wage provisions of G.S. 95-25.3;
(2) The definition provisions of G.S. 95-25.2 necessary to interpret the applicable provisions;
(3) The exemptions of subsections (a) and (b) of this section;
(4) The complainant protection provisions of G.S. 95-25.20.

(e) Employment in a seasonal recreation program by the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage)."

Sec. 3. G.S. 95-25.16 is amended by adding two subsections to read:

"(c) The Commissioner is empowered to enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of the department or agency, for the collection in the other state of claims and judgments for wages based upon investigations and findings made by the Commissioner or his authorized representative.

The Commissioner may, to the extent provided for by any reciprocal agreement entered into by law or with an agency of another state, as provided in this section, maintain actions in the courts of any other state for the collection of claims or judgments for wages and may assign the claims and judgments to the labor department or agency of the other state for collection to the extent that such an assignment may be permitted or provided for by the law of that state or by reciprocal agreement.

Except as provided in subsection (d) of this section, the Commissioner may, upon the written consent of the labor department or corresponding agency of any other state or of any person, board, officer, or commission authorized to act on behalf of the department or agency, maintain actions in the courts of this State upon assigned claims and judgments for wages arising in the other state in the same manner and to the same extent that these actions by the Commissioner are authorized when arising in this State.

(d) Subsection (c) of this section applies only to those states that extend comity to this State."

Sec. 4. G.S. 95-25.22 reads as rewritten:

"§ *95-25.22. Recovery of unpaid wages.*

(a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), or G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, their unpaid overtime compensation, or their unpaid amounts due under G.S. 95-25.6 through 95-25.12, as the case may ~~be.~~ be, plus

interest at the legal rate set forth in G.S. 24-1, from the date each amount first came due.

In its discretion, the court may award exemplary damages in an amount not in excess of the amount found to be due as provided above.

(b) Action to recover such liability may be maintained in the General Court of Justice by any one or more employees.

(c) Action to recover such liability may also be maintained in the General Court of Justice by the Commissioner at the request of the employees affected. Any sums thus recovered by the Commissioner on behalf of an employee shall be held in a special deposit account and shall be paid directly to the employee or employees affected.

(d) The court, in any action brought under this section may, in addition to any judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by the defendant.

The court may order costs and fees of the action and reasonable attorneys' fees to be paid by the plaintiff if the court determines that the action was frivolous.

(e) The Commissioner is authorized to determine and supervise the payment of the amounts due under this section, including interest at the legal rate set forth in G.S. 24-1, from the date each amount first came due, and the agreement to accept such amounts by the employee shall constitute a waiver of the employee's right to bring an action under subsection (b) of this section.

(f) Actions under this section must be brought within two years pursuant to G.S. 1-53.

(g) Prior to initiating any action under this section, the Commissioner shall exhaust all administrative remedies, including giving the employer the opportunity to be heard on the matters at issue and giving the employer notice of the pending action."

Sec. 5. Article 2A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"*§ 95-25.23A. Violation of record-keeping requirement; civil penalty.*

(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars ($250.00) per employee with the maximum not to exceed one thousand dollars ($1,000) per investigation by the Commissioner or his authorized representative. In determining the amount of the penalty, the Commissioner shall consider:

(1) The appropriateness of the penalty for the size of the business of the employer charged; and

(2) The gravity of the violation.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B.

(b) The amount of the penalty when finally determined may be recovered in a civil action brought by the Commissioner in the General Court of Justice.

(c) Sums collected under this section by the Commissioner shall be paid into the General Fund.

(d) Assessment of penalties under this section shall be subject to a two-year statute of limitations commencing at the time of the occurrence of the violation."

Sec. 6. G.S. 95-25.23(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250.00) for each violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter ~~150A~~ 150B and in a judicial proceeding pursuant to Article 4 of Chapter ~~150A~~ 150B."

Sec. 7. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 27th day of July, 1989.

S.B. 730 **CHAPTER 688**

AN ACT TO REPEAL THE SPEEDY TRIAL ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 35 of Chapter 15A of the General Statutes is repealed.

Sec. 2. G.S. 15A-133 reads as rewritten:

"*§ 15A-133. Waiver of venue; motion for change of venue; indictment may be returned in other county.*

(a) ~~Except for a waiver of venue made as required in Article 35 of this Chapter, Speedy Trial, a~~ A waiver of venue must be in writing

and signed by the defendant and the prosecutor indicating the consent of all parties to the waiver. The waiver must specify what stages of the proceedings are affected by the waiver, and the county to which venue is changed. If the venue is to be laid in a county in another prosecutorial district, the consent in writing of the prosecutor in that district must be filed with the clerks of both counties.

~~(b) If a waiver of venue is made by the defendant as provided in Article 35 of this Chapter, Speedy Trial, the prosecutor in his discretion may elect the county in the prosecutorial district as defined in G.S. 7A-60 in which to proceed. He may also elect not to proceed in another county, but the State is subject to the sanctions provided in Article 35.~~

(c) Motions for change of venue by the defendant are made under G.S. 15A-957. If venue is laid in a county in another prosecutorial district by order of the judge ruling on the motion, no consent of any prosecutor is required.

(d) If venue is changed to a county in another prosecutorial district, whether upon waiver of venue or by order of a judge, the prosecutor of the prosecutorial district where the case originated must prosecute the case unless the prosecutor of the district to which venue has been changed consents to conduct the prosecution.

(e) If venue is changed, whether upon waiver of venue or by order of a judge, the grand jury in the county to which venue has been transferred has the power to return an indictment in the case. If an indictment has already been returned before the change of venue, no new indictment is necessary and prosecution may be had in the new county under the original indictment."

Sec. 3. G.S. 15A-711(d) reads as rewritten:

"(d) Detainer.

(1) When a criminal defendant is imprisoned in this State pursuant to prior criminal proceedings, the clerk upon request of the prosecutor, must transmit to the custodian of the institution in which he is imprisoned, a copy of the charges filed against the defendant and a detainer directing that the prisoner be held to answer to the charges made against him. The detainer must contain a notice of the prisoner's right to proceed pursuant to G.S. 15A-711(c). ~~15A-711(c) and his right to a speedy trial pursuant to Article 35 of this Chapter, Speedy Trial.~~

(2) Upon receipt of the charges and the detainer, the custodian must immediately inform the prisoner of its receipt and furnish him copies of the charges and the detainer, must explain to him his right to proceed pursuant to G.S. 15A-

711(c). ~~15A-711(c) and his right to a speedy trial under Article 35 of this Chapter, Speedy Trial.~~

(3) The custodian must notify the clerk who transmitted the detainer of the defendant's impending release at least 30 days prior to the date of release. The notice must be given immediately if the detainer is received less than 30 days prior to the date of release. The clerk must direct the sheriff to take custody of the defendant and produce him for trial. The custodian must release the defendant to the custody of the sheriff, but may not hold the defendant in confinement beyond the date on which he is eligible for release.

(4) A detainer may be withdrawn upon request of the prosecutor, and the clerk must notify the custodian, who must notify the defendant."

Sec. 4. G.S. 15A-1381 reads as rewritten:

"*§ 15A-1381. Disposition defined.*

As used in this Article, the term 'disposition' means any action which results in termination or indeterminate suspension of the prosecution of a criminal charge. A disposition may be any one of the following actions:

(1) A finding of no probable cause pursuant to G.S. 15A-511(c)(2);

(2) An order of dismissal pursuant to G.S. 15A-604;

(3) A finding of no probable cause pursuant to G.S. ~~15A-612(3)~~ 15A-612(a)(3);

(4) A return of not a true bill pursuant to G.S. 15A-629;

~~(5) Dismissal of a charge pursuant to G.S. 15A-703;~~

(6) Dismissal pursuant to G.S. 15A-931 or 15A-932;

(7) Dismissal pursuant to G.S. 15A-954, 15A-955 or 15A-959;

(8) Finding of a defendant's incapacity to proceed pursuant to G.S. 15A-1002 or dismissal of charges pursuant to G.S. 15A-1008;

(9) Entry of a plea of guilty or no contest pursuant to G.S. 15A-1011, without regard to the sentence imposed upon the plea, and even though prayer for judgment on the plea be continued;

(10) Dismissal pursuant to G.S. 15A-1227;

(11) Return of verdict pursuant to G.S. 15A-1237, without regard to the sentence imposed upon such verdict and even though prayer for judgment on such verdict be continued."

Sec. 5. G.S. 15A-952 is amended by adding the following new subsection at the end to read:

"(g) In superior or district court, the judge shall consider at least the following factors in determining whether to grant a continuance:

(1) Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;

(2) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation; and

(3) Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child.

(4) Good cause for granting a continuance shall include those instances when the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General Assembly."

Sec. 6. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 27th day of July, 1989.

S.B. 1333 **CHAPTER 689**

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1989.

The General Assembly of North Carolina enacts:

-----BUDGET CONTINUATION

Section 1. Section 1 of Chapter 547, Session Laws of 1989, as rewritten by Section 1 of Chapter 649, Session Laws of 1989, reads as rewritten:

"Section 1. The Director of the Budget may continue through ~~July 28~~ August 28, 1989, to allocate funds for expenditure for current operations by State departments, institutions and agencies at a level not to exceed the level at which those operations were funded as of June 30, 1989, except as reduced by enactment of Chapter 500, Session Laws of 1989, as reflected in the reports of the House Committee on Appropriations, the Senate Committee on Appropriations, and the report of the Committee of Conference on Senate Bill 43, 1989 Session. Nothing in this section repeals any other act passed by the 1989 General Assembly appropriating funds. To the extent necessary to implement this authorization, funds currently available in the appropriate State funds and in cash balances, federal receipts, and

departmental receipts shall be considered appropriated by the General Assembly."

-----GASTON/MECKLENBURG PILOT MEDIATION

Sec. 2. (a) Section 16(b) of Chapter 830, Session Laws of 1987, as amended by Section 2 of Chapter 1036, Session Laws of 1987, and as rewritten by Section 2 of Chapter 547, and Section 2 of Chapter 649, Session Laws of 1989, reads as rewritten:

"(b) Effective from ratification of this act through ~~July 28~~ August 28, 1989, subsection 162(b) of Chapter 761 of the 1983 Session Laws is rewritten to read:

'(b) This section applies to Mecklenburg and to Gaston Counties only, each of which may establish a pilot program.'"

(b) Section 16(c) of Chapter 830, Session Laws of 1987, as amended by Section 2 of Chapter 1036, Session Laws of 1987, and as rewritten by Section 2 of Chapter 547, and Section 2 of Chapter 649, Session Laws of 1989, reads as rewritten:

"(c) Effective from ratification of this act through ~~July 28~~ August 28, 1989, subsection 162(d) of Chapter 761 of the 1983 Session Laws is rewritten to read:

'(d) This section shall be effective in Mecklenburg County only when both parents are residents of Mecklenburg County and in Gaston County only when both parents are residents of Gaston County.'"

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1989.

H.B. 275 **CHAPTER 690**

AN ACT TO PROVIDE THAT TRAFFICKING IN METHAMPHETAMINE IS A CRIMINAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95(h) is amended by adding a new subdivision to read:

"(3a) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine shall be guilty of a felony which felony shall be known as 'trafficking in methamphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a term of at least seven years in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a term of at least 14 years in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a term of at least 35 years in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000)."

Sec. 2. This act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 1989.

H.B. 752 **CHAPTER 691**

AN ACT TO MAKE MODIFICATIONS TO THE STATUTES REQUIRING ASSESSMENT OF CONVICTED IMPAIRED DRIVERS.

The General Assembly of North Carolina enacts:

PART I. POSTPONE STATEWIDE APPLICABILITY OF 1987 LAW.

Section 1. Section 5 of Chapter 797 of the 1987 Session Laws as amended by Chapter 548, Session Laws of 1989 reads as rewritten:

"Sec. 5. Section 2 of this act shall be established as a pilot program in not more than ten counties in the State as determined and required by the Division Director of Mental Health, Mental Retardation and Substance Abuse Services, shall become effective January 1, 1988, and shall apply to sentencing for convictions after that date. The Division for Mental Health, Mental Retardation and Substance Abuse Services shall monitor the pilot programs and shall report administrative costs, case management practices, participant recidivism, and other relevant information, to the General Assembly on or before February 1, 1989. Section 2 of this act shall become effective throughout the State ~~July 28, 1989~~ January 1, 1990."

Sec. 1.1. Section 4 of Chapter 797 of the 1987 Session Laws as amended by Chapter 548, Session Laws of 1989 reads as rewritten:

"Sec. 4. Section 1 of this act shall become effective January 1, 1988 and shall expire ~~July 28, 1989~~ December 31, 1989 and shall apply to sentencing for convictions after January 1, 1988."

PART II. TECHNICAL CORRECTION TO 1987 PILOT LAW.

Sec. 2. Effective January 1, 1988, Section 2 of Chapter 797, Session Laws of 1987 reads as rewritten:

"Sec. 2. G.S. 20-179(m) reads as rewritten:

'(m) Assessment and Treatment Required. If a defendant being sentenced under this section is placed on probation, he ~~must~~ shall be required as a condition of that probation to obtain a substance abuse assessment; provided, however, that the defendant shall have the option of meeting the conditions of his probation either in the county of his conviction or in the county of his residence and he shall be sentenced according to the law of the county selected. The defendant shall inform the court at the time of his conviction of the county in which he has chosen to meet the conditions of his probation. ~~if:~~

~~(1) He had an alcohol concentration of 0.20 or more as indicated by a chemical analysis taken when he was charged; or~~

~~(2) He has a prior conviction for an offense involving impaired driving within the five years preceding the date of the offense for which he is being sentenced and, when he was charged with the current offense, he either:~~

~~a. Had an alcohol concentration of 0.10 or more; or~~

~~b. Willfully refused to submit to a chemical analysis.~~

The judge ~~must~~ shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or

Substance Abuse Counselor', as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall ~~In addition, he must require the defendant to participate in a treatment program if recommended by the assessing agency, and he must~~ require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the ~~Division of Adult Probation and Parole~~ Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. At the time of sentencing ~~The~~ the judge ~~must~~ shall require the defendant to pay ~~twenty-five dollars ($25.00) for the services of the assessment facility and the treatment fees that may be charged by the treatment facility~~ one hundred twenty-five dollars ($125.00). The payment of the fee of one hundred twenty-five dollars ($125.00) shall be (i) fifty dollars ($50.00) to the assessing agency and (ii) seventy-five dollars ($75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. G.S. 20-179(l) shall not apply to defendants sentenced under this section. Fees received by the Area Mental Health, Mental Retardation, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Mental Retardation, and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. ~~122-35.47~~ 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee. Any determinations with regard to the defendant's ability to pay the assessment fee ~~must~~ shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding ~~must~~ shall be ~~forwarded in writing to~~ filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports ~~must~~ shall be filed with the court or the ~~Division of Adult Probation and Parole~~ Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the drivers license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school, provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar ($50.00) fee and the seventy-five dollar ($75.00) fee as appropriate.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

PART III. AMENDMENTS TO PILOT PROGRAM/PERMANENT LAW.

Sec. 2.1. Effective July 28, 1989, G.S. 20-179(m) as rewritten by Section 2 of Chapter 797, Session Laws of 1987, and Section 2 of this act, as applicable:

(1) Until December 31, 1989, as a pilot program as provided by Section 5 of Chapter 797, Session Laws of 1987, as amended by Section 1 of this act; and

(2) On a statewide basis beginning January 1, 1990, as provided by Section 5 of Chapter 797, Session Laws of 1987, as amended by Section 1 of this act reads as rewritten:

"(m) Assessment and Treatment Required in Certain Cases. If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a

substance abuse assessment~~: provided, however, that the defendant shall have the option of meeting the conditions of his probation either in the county of his conviction or in the county of his residence and he shall be sentenced according to the law of the county selected. The defendant shall inform the court at the time of his conviction of the county in which he has chosen to meet the conditions of his probation~~.

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense

within five years. At the time of sentencing the judge shall require the defendant to pay $125.00. The payment of the fee of one hundred twenty-five dollars ($125.00) shall be (i) fifty dollars ($50.00) to the assessing agency and (ii) seventy-five dollars ($75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. G.S. 20-179(l) shall not apply to defendants sentenced under this section. Fees received by the Area Mental Health, Mental Retardation, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Mental Retardation and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee. If an area mental health facility or its contractor is providing treatment or education services to a defendant pursuant to this subsection, the area facility or its contractor may require that the defendant pay the fees prescribed by law for the services before it certifies that the defendant has completed the recommended treatment or educational program. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment, participate in a

treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or ~~school,~~ school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar ($50.00) fee and the seventy-five dollar ($75.00) fee as appropriate. A defendant may within 90 days after an agency decision to decline to certify, by filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the agency send a certificate of completion to the Division of Motor Vehicles.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

PART IV. CONFORMING AMENDMENTS.

Sec. 3. Effective January 1, 1990, G.S. 20-179, including subsection (m) as rewritten by Section 2.1 of this act, reads as rewritten:

"*§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.*

(a) Sentencing Hearing Required. -- After a conviction for impaired driving under G.S. 20-138.1, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his

attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration.

(b) Repealed by Session Laws 1983, c. 435, s. 29, effective October 1, 1983.

(c) Determining Existence of Grossly Aggravating Factors. -- At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. If the defendant has been convicted of two or more prior offenses involving impaired driving, if the convictions occurred within seven years before the date of the offense for which he is being sentenced, the judge must impose the Level One punishment under subsection (g). The judge must also impose the Level One punishment if he determines that two or more of the following grossly aggravating factors apply:

(1) A single conviction for an offense involving impaired driving, if the conviction occurred within seven years before the date of the offense for which the defendant is being sentenced.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

If the judge determines that only one of the above grossly aggravating factors applies, he must impose the Level Two punishment under subsection (h). In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(d) Aggravating Factors to Be Weighed. -- The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.20 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to an accident causing property damage in excess of five hundred dollars ($500.00) or personal injury.
(4) Driving by the defendant while his driver's license was revoked.
(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
(6) Conviction under G.S. 20-141(j) of speeding by the defendant while fleeing or attempting to elude apprehension.
(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
(8) Passing a stopped school bus in violation of G.S. 20-217.
(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. -- The judge must also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge must weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.11 at any relevant time after the driving.
(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor must occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. -- If the judge in the sentencing hearing determines that there are no grossly aggravating factors, he must weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he must note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level must be imposed.

(f1) Aider and Abettor Punishment. -- ~~Nothwithstanding~~ Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five

punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. -- Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge must determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 14 days. If the defendant is placed on probation, the judge must, if required by ~~subsections (l) or~~ subsection (m), impose the conditions relating to ~~treatment~~ assessment, treatment, and education described in ~~those subsections,~~ that subsection. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge must, if required by ~~subsections (l) or~~ subsection (m), impose the conditions relating to ~~treatment~~ assessment, treatment, and education described in ~~those subsections,~~ that subsection. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than

six months. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

(3) Not operate a motor vehicle for a term of at least 90 days; or

(4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by ~~subsections (l) or~~ subsection (m), must impose the conditions relating to ~~treatment~~ assessment, treatment, and education described in ~~those subsections.~~ that subsection. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

(3) Not operate a motor vehicle for a term of 60 days; or

(4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by ~~subsections (l) or~~ subsection (m), must impose the conditions relating to ~~treatment~~ assessment, treatment, and education described in ~~those subsections.~~ that subsection. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

(3) Not operate a motor vehicle for a term of 30 days; or

(4) Any combination of these conditions.

The judge may in his discretion impose any other lawful condition of probation and, if required by ~~subsections (l) or~~ subsection (m), must

impose the conditions relating to ~~treatment~~ assessment, treatment, and education described in ~~those subsections,~~ that subsection. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k1) Credit for Inpatient Treatment. Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. The credit may not be used more than once during the seven-year period immediately preceding the date of the offense. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

~~(l) Education Required in Certain Cases. -- If a defendant being sentenced under this section is placed on probation, he must be required as a condition of that probation to complete the course of instruction successfully at an alcohol and drug education traffic school established pursuant to G.S. 20-179.2 within 90 days of the date of conviction unless:~~

~~(1) He has previously been assigned to an alcohol and drug education traffic school and has successfully completed the course of instruction; or~~

~~(2) The judge finds that the defendant will not benefit from the course of instruction because of specific, extenuating circumstances; or~~

~~(3) There is no alcohol and drug education traffic school within a reasonable distance of the defendant's residence.~~

(m) Assessment and Treatment Required in Certain Cases. If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment.

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days

from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. At the time of sentencing the judge shall require the defendant to pay one hundred twenty-five dollars ($125.00). The payment of the fee of one hundred twenty-five dollars ($125.00) shall be (i) fifty dollars ($50.00) to the assessing agency and (ii) seventy-five dollars ($75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. G.S. 20-179(l) shall not apply to defendants sentenced under this section. Fees received by the Area Mental Health, Mental Retardation, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the

local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Mental Retardation and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee. If an area mental health facility or its contractor is providing treatment or education services to a defendant pursuant to this subsection, the area facility or its contractor may require that the defendant pay the fees prescribed by law for the services before it certifies that the defendant has completed the recommended treatment or educational program. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar ($50.00) fee and the seventy-five dollar ($75.00) fee as appropriate. A defendant may within 90 days after an agency decision to decline to certify, by filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the

defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the agency send a certificate of completion to the Division of Motor Vehicles.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program.

(n) Time Limits for Performance of Community Service. -- If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service must be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. -- In the sentencing hearing, the State must prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant must prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he must give *prima facie* effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge must afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had

not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. -- For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible and has served the mandatory minimum period of imprisonment.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Meaning of 'Conviction'. -- For the purposes of this Article, 'conviction' includes a guilty verdict, guilty plea, plea of no contest, or anything that would be treated as a conviction under G.S. 20-24(c).

(r) Supervised Probation Terminated. -- Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets two conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this section.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Treatment and education as described in ~~subsections (l) and~~ subsection (m); or

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. -- The judge in his discretion may order a term of imprisonment or community service to be served on weekends, even if the sentence cannot be served in consecutive sequence.

(t) Assessment for Convicted Defendants not Placed on Probation. -- Any person convicted of impaired driving who is not placed on probation shall obtain a substance abuse assessment as a condition of having his driver's license restored following a revocation ordered pursuant to G.S. 20-17(2). The assessment shall be obtained from an area mental health agency, its designated agency, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. The fee for the assessment shall be as specified in subsection (m) of this section. The assessing agency shall provide to the Department of Human Resources a certificate attesting that the assessment has been performed and indicating its results. The Department shall promptly notify the Division of Motor Vehicles of the receipt of the certificate. The Division shall not reissue a driver's license to the defendant until this notification is received. The Commission for Mental Health, Mental Retardation, and Substance Abuse Services may adopt rules to implement the provisions of this subsection."

Sec. 4. G.S. 20-16.4 is repealed.

Sec. 4.1. Effective July 28, 1989, G.S. 20-179(m), as it applies until December 31, 1989, as provided by Section 4 of Chapter 797, Session Laws of 1987, as amended by Section 1.1 of this act, reads as rewritten:

"(m) Assessment and Treatment Required in Certain Cases. -- If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment if:

(1) He had an alcohol concentration of 0.15 or more as indicated by a chemical analysis taken when he was charged; or

(2) He has a prior conviction for an offense involving impaired driving within the five years preceding the date of the offense for which he is being sentenced and, when he was charged with the current offense, he had an alcohol concentration of 0.10 or more; or

(3) He willfully refused to submit to a chemical analysis.

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days

from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources. If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. The judge shall require the defendant to pay fifty dollars ($50.00) for the services of the assessment facility and any additional treatment fees that may be charged by the treatment facility. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge. In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. Upon the completion of the court-ordered assessment or court-ordered treatment, the assessing or treatment agency shall give the Division of

Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment or participate in a treatment program unless it has received the original certificate of completion from the assessing or treatment agency or ~~school.~~ school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. A defendant may within 90 days after an agency decision to decline to certify, by filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the agency send a certificate of completion to the Division of Motor Vehicles.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

Sec. 5. Sections 1 and 1.1 of this act are effective upon ratification. Section 4 shall become effective January 1, 1990. The remainder of this act is effective as provided herein.

In the General Assembly read three times and ratified this the 27th day of July, 1989.

H.B. 399 **CHAPTER 692**

AN ACT TO ESTABLISH THE NORTH CAROLINA HIGHWAY TRUST FUND, TO PROVIDE REVENUE FOR THE FUND, TO DESIGNATE HOW REVENUE IN THE FUND IS TO BE USED, AND TO RAISE REVENUE FOR THE GENERAL FUND.

The General Assembly of North Carolina enacts:

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I. NORTH CAROLINA HIGHWAY TRUST FUND

II. CERTIFICATE OF TITLE FEE/ALTERNATE TRANSPORTATION FUNDING
III. SALES TAX CHANGES
IV. MOTOR VEHICLE USE TAX
V. MOTOR FUEL TAX
VI. REPEAL ROAD TAX REGISTRATION FEE
VII. ESTIMATED INCOME TAX AMENDMENTS
VIII. EFFECTIVE DATES AND SUNSET

PART I.
HIGHWAY TRUST FUND.

Section 1.1. Chapter 136 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 14.
"North Carolina Highway Trust Fund.

"*§ 136-175. Definitions.*

The following definitions apply in this Article:

(1) Intrastate System. The network of major, multilane arterial highways composed of those projects listed in G.S. 136-179, I-240, I-277, US-29 from I-85 to the Virginia line, and any other route added by the Department of Transportation under G.S. 136-178.

(2) Transportation Improvement Program. The schedule of major transportation improvement projects required by G.S. 143B-350(f)(4).

(3) Trust Fund. The North Carolina Highway Trust Fund.

"*§ 136-176. Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.*

(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

(1) Motor fuel, special fuel, and road tax revenue deposited in the Fund under G.S. 105-445, 105-449.16, and 105-449.43, respectively.

(2) Motor vehicle use tax deposited in the Fund under G.S. 105-171.

(3) Revenue from the fee payable when a certificate of title is issued for a motor vehicle under G.S. 20-85.

(4) Revenue available from the retirement of refunding bonds issued to repay highway construction bonds and deposited in the Fund under G.S. 136-183.

(5) Interest and income earned by the Fund.

(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed five percent (5%) of the

amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. The rest of the funds in the Trust Fund shall be allocated and used as follows:

(1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct the projects of the Intrastate System described in G.S. 136-179.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180.

(3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182.

(c) If funds are received under 23 U.S.C. Chapter 1, Federal-Aid Highways, for a project for which funds in the Trust Fund are allocated, an amount equal to the amount of federal funds received may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program.

(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143-28.1 only for the biennium following the year in which the contract is let.

"*§ 136-177. Limitation on funds obligated from Trust Fund.*

In a fiscal year, the Department of Transportation may not obligate more Trust Fund revenue, other than revenue allocated for city streets under G.S. 136-176(b)(3) or secondary roads under G.S. 136-176(b)(4) and G.S. 20-85(b), to construct or improve highways than the amount indicated in the following table:

Fiscal Year	Maximum Expenditure
1989-90	$200,000,000
1990-91	250,000,000
1991-92	300,000,000
1992-93	400,000,000
1993-94	500,000,000
1994-95 and following years	Unlimited

The amount of revenue credited to the Trust Fund in a fiscal year under G.S. 136-176(a) that exceeds the maximum allowable expenditure set in the table above may be used only for preliminary planning and design and the acquisition of rights-of-way for scheduled highways and highway improvements to be funded from the Trust Fund.

"*§ 136-178. Purpose of Intrastate System.*

The Intrastate System is established to provide high-speed, safe travel service throughout the State. It connects major population centers both inside and outside the State and provides safe, convenient, through-travel for motorists. It is designed to support statewide growth and development objectives and to connect to major highways of adjoining states. All segments of the routes in the Intrastate System shall have at least four travel lanes and, when warranted, shall have vertical separation or interchanges at crossings, more than four travel lanes, or bypasses. Access to a route in the Intrastate System is determined by travel service and economic considerations.

The Department of Transportation may add a route to the Intrastate System if the route is a multilane route and has been designed and built to meet the construction criteria of the Intrastate System projects. No funds may be expended from the Trust Fund on routes added by the Department.

"§ *136-179. Projects of Intrastate System funded from Trust Fund.*

Funds allocated from the Trust Fund for the Intrastate System may be used only for the following projects of the Intrastate System:

Route	Improvements	Affected Counties
I-40	Widening	Buncombe, Haywood, Guilford, Wake, Durham
I-77	Widening	Mecklenburg
I-85	Widening	Durham, Orange, Alamance, Guilford, Cabarrus, Mecklenburg, Gaston
I-95	Widening	Halifax
US-1	Complete 4-laning from Henderson to South Carolina Line (including 6-laning of Raleigh Beltline)	Vance, Franklin, Wake, Chatham, Lee, Moore, Richmond
US-13	Connector from I-95 to NC-87	Cumberland
US-13	Complete 4-laning from Virginia Line to US-17	Gates, Hertford, Bertie
US-17	Complete 4-laning from	Camden, Pasquotank,

	Virginia Line to South Carolina Line including Washington, New Bern, and Jacksonville Bypasses)	Perquimans, Chowan, Bertie, Martin, Beaufort, Craven, Jones, Onslow, Pender, New Hanover, Brunswick
US-19/ US-19E	Complete 4-laning from US-23 to NC 194 in Ingalls	Madison, Yancey, Mitchell, Avery
US-19	Complete 4-laning	Cherokee, Macon, Swain
US-23	Complete 4-laning and upgrading existing 4-lanes from Tennessee Line to I-240	Madison, Buncombe
US-23-441	Complete 4-laning from Macon US-19/US-74 to Georgia Line	
US-52	Complete 4-laning from I-77 to Lexington (including new I-77 Connector)	Surry, Davidson
US-64	Complete 4-laning from Raleigh to Coast (including freeway construction from I-95 to US-17)	Edgecombe, Pitt, Martin, Washington, Tyrrell, Dare
US-64	Complete 4-laning from Lexington to Raleigh	Davidson, Randolph, Chatham, Wake
US-70	Complete 4-laning from Raleigh to Morehead City (including Clayton, Goldsboro, Kinston, Smithfield-Selma, and Havelock	Wake, Johnston, Wayne, Lenoir, Craven

	Bypasses predominately freeways on predominately new locations)	
US-74	Complete 4-laning from Charlotte to US-17 (including multilaning of Independence Blvd. in Charlotte, and Bypasses of Monroe, Rockingham, and Hamlet)	Mecklenburg, Union, Richmond, Robeson, Columbus
US-74	Complete 4-laning from I-26 to I-85	Polk, Rutherford
US-158	Complete 4-laning from Winston-Salem to Whalebone	Forsyth, Guilford, Rockingham, Caswell, Person, Granville, Vance, Warren, Halifax, Northampton, Gates, Hertford, Pasquotank, Camden, Currituck, Dare
	New bridge over Currituck Sound	Currituck
US-221	Complete 4-laning from Linville to South Carolina	Avery, McDowell, Rutherford
US-220	Complete 4-laning from I-40 to US-1	Guilford, Randolph, Montgomery, Richmond
US-220/ NC-68	Complete 4-laning from Virginia Line to I-40	Rockingham, Guildord
US-264	Complete 4-laning from US-64 to Washington (including Wilson and Greenville Bypasses) (including freeway construction from I-95	Wilson, Greene, Pitt

	to Greenville)	
US-321	Complete 4-laning from Boone to South Carolina Line	Caldwell, Catawba, Lincoln, Gaston
US-421	Complete 4-laning from Tennessee Line to I-40	Watauga, Wilkes, Yadkin
US-421	Complete 4-laning from Greensboro to Sanford (including Bypass of Sanford)	Chatham, Lee
NC-24	Complete 4-laning from Charlotte to Morehead City	Mecklenburg, Cabarrus, Stanly, Montgomery,Moore, Harnett, Cumberland, Sampson, Duplin, Onslow, Carteret
NC-87	Complete 4-laning from Sanford to US-74	Lee, Harnett, Cumberland, Bladen, Columbus
NC-105	Complete 4-laning from Boone to Linville	Watauga, Avery
NC-168	Complete multilaning from Virginia Line to US-158	Currituck
NC-194	Complete 4-laning from US-19E to US-221	Avery

"§ *136-180. Urban loops.*

Funds allocated from the Trust Fund for urban loops may be used only for the following urban loops:

Loop	Description	Affected Counties
Asheville Western Loop	Multilane facility on new location from I-26 west of Asheville to US-19/23 north of Asheville for the	Buncombe

	purpose of connecting these roads. The funds may be used to improve existing corridors.	
Charlotte Outer Loop	Multilane facility on new location encircling City of Charlotte	Mecklenburg
Durham Northern Loop	Multilane facility on new location from I-85 west of Durham to US-70 east of Durham	Durham, Orange
Greensboro Loop	Multilane facility on new location encircling City of Greensboro	Guilford
Raleigh Outer Loop	Multilane facility on new location from US-1 southwest of Cary northerly to US-64 in eastern Wake County	Wake
Wilmington Bypass	Multilane facility on new location from US-17 northeast of Wilmington to US-17 southwest of Wilmington	New Hanover
Winston-Salem Northbelt	Multilane facility on new location from I-40 west of Winston-Salem northerly to I-40 in eastern Forsyth County	Forsyth

"*§ 136-181. Supplement for city streets.*

Funds allocated to supplement the appropriations for city streets made under G.S. 136-41.1 shall be distributed to cities as provided in that statute.

"*§ 136-182. Supplement for secondary road construction.*

Funds are allocated from the Trust Fund to increase allocations for secondary road construction made under G.S. 136-44.2A so that all State-maintained unpaved secondary roads with a traffic vehicular

equivalent of at least 50 vehicles a day can be paved by the 1998-99 fiscal year. This supplement shall be discontinued when the Department of Transportation certifies that, with funds available from sources other than the Trust Fund, all State-maintained unpaved secondary roads, regardless of their traffic vehicular equivalent, can be paved during the following six years. If the supplement is discontinued before the Trust Fund terminates, the funds that would otherwise be allocated under this section shall be added to the allocation from the Trust Fund for projects of the Intrastate System.

"*§ 136-183. Revenue available from retirement of bonds credited to Highway Trust Fund.*

Beginning with the 1994-95 fiscal year, the State Treasurer shall credit the following amounts of revenue to the Trust Fund:

Fiscal Year	Yearly Amount
1994-95	$ 9,600,000
1995-96	12,100,000
1996-97	32,300,000
1997-98 and each subsequent year until the Trust Fund ends	38,000,000.

These amounts represent increased revenue resulting from the retirement of refunding bonds issued to repay highway construction bonds. In each fiscal year, the State Treasurer shall credit to the Trust Fund one-fourth of the amount set in the table for that year within 10 days after the end of each calendar quarter.

"*§ 136-184. Reports by Department of Transportation.*

(a) The Department of Transportation shall develop, and update annually, a report containing a completion schedule for all projects to be funded from the Trust Fund. The report shall include a separate schedule for the Intrastate System projects, the urban loop projects, and the paving of unpaved State-maintained secondary roads that have a traffic vehicular equivalent of at least 50 vehicles a day. The annual update shall indicate the projects, or portions thereof, that were completed during the preceding fiscal year, any changes in the original completion schedules, and the reasons for the changes. The Department shall submit the report and the annual updates to the Joint Legislative Highway Oversight Committee.

(b) The Department of Transportation shall make quarterly reports to the Joint Legislative Highway Oversight Committee containing any information requested by the Committee. The Department shall provide the Committee with all information needed to determine if funds available under the Trust Fund and the Transportation Improvement Program are being spent in accordance with G.S. 136-17.2A."

Sec. 1.2. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12E.

"Joint Legislative Highway Oversight Committee.

"*§ 120-70.50. Creation and membership of Joint Legislative Highway Oversight Committee.*

The Joint Legislative Highway Oversight Committee is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

"*§ 120-70.51. Purpose and powers of Committee.*

(a) The Joint Legislative Highway Oversight Committee shall:

(1) Review reports prepared by the Department of Transportation under G.S. 136-184.

(2) Monitor the funds deposited in and expenditures from the North Carolina Highway Trust Fund and the Highway Fund.

(3) Determine whether funds in the Trust Fund are spent in accordance with G.S. 136-17.2A and Article 14 of Chapter 136.

(4) Determine whether any revisions are needed in the funding for a program for which funds in the Trust Fund may be used, including revisions needed to meet any statutory timetable for the program.

(5) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the funding for programs funded from the Trust Fund.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of

the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

"§ *120-70.52. Organization of Committee.*

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Highway Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through 120-19.4.

(c) The Committee shall be funded by appropriations made to the Highway Trust Fund and allocated to the Intrastate System projects. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

Sec. 1.3. G.S. 136-12 reads as rewritten:

"§ *136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.*

(a) The Department of Transportation shall, on or before the tenth day after the convening of each regular session of the General Assembly of North Carolina, make a full printed, detailed report to the General Assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the Department of Transportation, and such other data as may be of interest in connection with the work of the Department of Transportation. A full account of each road project shall be kept by and under the direction of the Department of Transportation or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the Governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request.

(b) At least 25 days before it approves a Transportation Improvement Program in accordance with G.S. 143B-350(f)(4) or approves interim changes to a Transportation Improvement Program, the Department shall submit the proposed Transportation Improvement Program or proposed interim changes to a Transportation Improvement Program to the following members and staff of the General Assembly:

(1) The Speaker and the Speaker Pro Tempore of the House of Representatives;

(2) The Lieutenant Governor and the President Pro Tempore of the Senate;

(3) The Chairs of the House and Senate Appropriations Committees;

(4) Each member of the Joint Legislative Highway Oversight Committee; and

(5) The Fiscal Research Division of the Legislative Services Commission."

Sec. 1.4. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"*§ 136-17.2A. Distribution formula for funds expended on Intrastate System and Transportation Improvement Program.*

(a) Funds expended for the Intrastate System projects listed in G.S. 136-179 and both State and federal-aid funds expended under the Transportation Improvement Program, other than funds expended on an urban loop project listed in G.S. 136-180, shall be distributed throughout the State in accordance with this section. For purposes of this distribution, the counties of the State are grouped into seven distribution regions as follows:

(1) Distribution Region A consists of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Johnston, Martin, Nash, Northampton, Pasquotank, Perquimans, Tyrrell, Washington, Wayne, and Wilson.

(2) Distribution Region B consists of the following counties: Beaufort, Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt, and Sampson.

(3) Distribution Region C consists of the following counties: Bladen, Columbus, Cumberland, Durham, Franklin, Granville, Harnett, Person, Robeson, Vance, Wake, and Warren.

(4) Distribution Region D consists of the following counties: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Orange, Rockingham, Rowan, and Stokes.

(5) Distribution Region E consists of the following counties: Anson, Cabarrus, Chatham, Hoke, Lee, Mecklenburg, Montgomery, Moore, Randolph, Richmond, Scotland, Stanly, and Union.

(6) Distribution Region F consists of the following counties: Alexander, Alleghany, Ashe, Avery, Caldwell, Catawba, Cleveland, Gaston, Iredell, Lincoln, Surry, Watauga, Wilkes, and Yadkin.

(7) Distribution Region G consists of the following counties: Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey.

(b) Until ninety percent (90%) of the mileage of the Intrastate System projects listed in G.S. 136-179 is completed, the Secretary of Transportation shall, on or before October 1 of each year, calculate the estimated amount of funds subject to this section that will be available for the next seven program years beginning that October 1. The Secretary shall then calculate a tentative percentage share for each distribution region by multiplying the total estimated amount by a factor that is based:

(1) Twenty-five percent (25%) on the estimated number of miles to complete the Intrastate System projects in that distribution region compared to the estimated number of miles to complete the total Intrastate System;

(2) Fifty percent (50%) on the estimated population of the distribution region compared to the total estimated population of the State; and

(3) Twenty-five percent (25%) on the fraction one-seventh, which provides an equal share based on the number of distribution regions.

(c) When ninety percent (90%) of the mileage of the Intrastate System projects listed in G.S. 136-179 is completed, the Secretary of Transportation shall, on or before October 1 of each year, calculate the estimated amount of funds subject to this section that will be available for the next seven program years beginning that October 1. The Secretary shall then calculate a tentative percentage share for each distribution region by multiplying the total estimated amount by a factor that is based:

(1) Sixty-six percent (66%) on the estimated population of the distribution region compared to the total estimated population of the State; and

(3) Thirty-four percent (34%) on the fraction one-seventh, which provides an equal share based on the number of distribution regions.

(d) In each fiscal year, the Department shall, as nearly as practicable, expend in a distribution region an amount equal to that region's tentative percentage share of the funds that are subject to this section and are available for that fiscal year. In any consecutive seven-year period, the amount expended in a distribution region must be between ninety percent (90%) and one hundred ten percent (110%) of the sum of the amounts established under this subsection as the target amounts to be expended in the region for those seven years.

(e) In making the calculation under this section, the Secretary shall use the most recent estimates of population certified by the State Budget Officer.

(f) In developing the schedules of improvements to be funded from the Trust Fund and of improvements to be made under the Transportation Improvement Program, the Board of Transportation shall consider the highway needs of every county in a distribution region and shall make every reasonable effort to schedule the construction of highway improvements in a manner that addresses the needs of every county in the region in an equitable and timely manner."

Sec. 1.5. G.S. 136-28.4 reads as rewritten:

"§ *136-28.4. State ~~policy; cooperation in promoting the use of~~ policy concerning participation by ~~small, minority, physically handicapped and women~~ minority contractors.*

(a) It is the policy of this State to encourage and promote the use of ~~small, minority, physically handicapped and women~~ minority contractors in the construction, alteration and maintenance of State roads, streets, highways, and bridges and in the procurement of materials for such projects. All State agencies, institutions and political subdivisions shall cooperate with the Department of Transportation and all other State agencies, institutions and political subdivisions in efforts to encourage and promote the use of ~~small, minority, physically handicapped and women~~ minority contractors in such State construction, alteration, maintenance and procurement.

(b) A ten percent (10%) goal for participation by minority businesses in road or bridge construction, alteration, or maintenance projects is established. The Department of Transportation shall endeavor to award to minority businesses at least ten percent (10%), by value, of the contracts it lets for the construction, alteration, or maintenance of roads and bridges. The Department shall adopt written procedures specifying the steps it will take to achieve this goal, provided that the Department shall give equal opportunity for contracts

it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

(c) As used in this section, the term 'minority' has the same meaning as in 49 C.F.R. § 23.5."

Sec. 1.6. G.S. 136-41.1(a) reads as rewritten:

"(a) There is ~~hereby~~ annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one and three-fourths cents (1 3/4¢) tax on each gallon of motor fuel as taxed by G.S. 105-434 and 105-435, to be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with ~~the following formula:~~ this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the Highway Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

Seventy-five percent (75%) of ~~said funds~~ the funds appropriated for cities and towns shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the State highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds ~~by virtue of G.S. 136-41.1 and 136-41.2~~ under this section and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the

Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 of each year ~~after March 15, 1951~~. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

~~No allocation to cities and towns shall be made under the provisions of this section from the one cent (1¢) per gallon additional tax on gasoline imposed by Chapter 46 of the Session Laws of 1965, unless and until said additional one cent (1¢) per gallon tax produces funds which are not needed for or committed by said Chapter 46 of the Session Laws of 1965, to the payment of the principal of or the interest on the secondary road bonds issued pursuant to the provisions of said Chapter 46 of the Session Laws of 1965. The Department of Transportation is hereby authorized to~~ The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount ~~appropriated in G.S. 136-41.1~~ appropriated for distribution under this section for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word 'street' as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under ~~G.S. 136-41.1 and 136-41.2~~ this section submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis."

Sec. 1.7. G.S. 136-44.2A reads as rewritten:

"*§ 136-44.2A. Secondary road construction.*

There shall be annually allocated out of the State Highway Fund to the Department of Transportation for secondary road construction programs developed pursuant to G.S. 136-44.7 and 136-44.8, a sum equal to that allocation made from the Highway Fund under G.S.

136-41.1(a). ~~Such secondary roads allocation shall be made in accordance with the provisions of G.S. 136-44.5.~~ In addition, as provided in G.S. 136-176(b)(4) and G.S. 20-85(b), revenue is annually allocated from the Highway Trust Fund for secondary road construction. Of the funds allocated from the Highway Fund and the Highway Trust Fund, the sum of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated among the counties in accordance with G.S. 136-44.5(b). All funds for secondary road construction in excess of that amount shall be allocated among the counties in accordance with G.S. 136-44.5(c)."

Sec. 1.8. G.S. 136-44.5 reads as rewritten:

"§ *136-44.5. Secondary roads; mileage study; allocation of funds.*

(a) Before July 1, in each calendar year, the Department of Transportation shall make a study of all state-maintained unpaved roads in the State. The study shall determine the number of miles of unpaved state-maintained roads in each county, ~~and~~ the total number of miles of unpaved state-maintained roads in the ~~State.~~ State, the number of miles of unpaved state-maintained roads in each county that have a traffic vehicular equivalent of at least 50 vehicles a day, and the total number of miles of unpaved state-maintained roads in the State that have a traffic vehicular equivalent of at least 50 vehicles a day. Except for federal-aid programs, the Department shall allocate all secondary road construction funds on the basis of a formula using the study figures. ~~The allocation shall be~~

(b) The first sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated as follows: Each county shall receive a percentage of ~~the total funds available for totally state-funded secondary road construction,~~ these funds, the percentage to be determined as a factor of the number of miles of unpaved state-maintained secondary roads in the county divided by the total number of miles of unpaved state-maintained secondary roads in the State.

(c) Funds allocated for secondary road construction in excess of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated to each county based on the percentage proportion that the number of miles in the county of state-maintained unpaved secondary roads with a traffic vehicular equivalent of at least 50 vehicles a day bears to the total number of miles in the State of state-maintained unpaved secondary roads with a traffic vehicular equivalent of at least 50 vehicles a day.

(d) Copies of the Department study of unpaved state-maintained secondary roads and copies of the individual county allocations shall be made available to newspapers having general circulation in each county."

Sec. 1.9. G.S. 136-44.7 reads as rewritten:

"§ *136-44.7. Secondary roads; annual work program.*

(a) The Department of Transportation shall be responsible for developing criteria for improvements and maintenance of secondary roads. The criteria shall be adopted by the Board of Transportation before it shall become effective. The Department of Transportation shall be responsible for developing annual work programs for both construction and maintenance of secondary roads in each county in accordance with criteria developed. It shall reflect the long-range and immediate goals of the Department of Transportation. Projects on the annual construction program for each county shall be rated according to their priority based upon the secondary road criteria and standards which shall be uniform throughout the State. Tentative construction projects and estimated funding shall also be listed in accordance to priority. The annual construction program shall be adopted by the Board of Transportation before it shall become effective.

(b) When a secondary road in a county is listed in the first 10 secondary roads to be paved during a year on a priority list issued by the Department of Transportation under this section, the secondary road cannot be removed from the top 10 of that list or any subsequent list until it is paved. All secondary roads in a county shall be paved, insofar as possible, in the priority order of the list."

Sec. 1.10. G.S. 143B-350(f)(4) reads as rewritten:

"(4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the ~~future which shall be published in a single document along with a report of the progress accomplished in the past year and the anticipated funding sources for these projects;~~ future. This schedule is designated the Transportation Improvement Program; it must be published and copies must be available for distribution. The document that contains the Transportation Improvement Program, or a separate document that is published at the same time as the Transportation Improvement Program, must include the anticipated funding sources for the improvement projects included in the Program, a list of any changes made from the previous year's Program, and the reasons for the changes;".

Sec. 1.11. The Department of Transportation shall determine on which highways, bridges, and ferries it is economically feasible to collect tolls and shall report its findings to the General Assembly. If the Department finds it desirable to establish toll roads, bridges, or ferries, the Department shall include in its report any legislation

needed to establish the toll roads, bridges, or ferries and to implement the collection of tolls, including the creation of a North Carolina Toll Authority.

Sec. 1.12. The Legislative Research Commission may study the long-range transportation needs of North Carolina. In conducting the study the Commission may consider the present and future transportation needs for vehicles, trucks, and passenger vehicles, the use and availability of railroad corridors, and the use and availability of high-speed traffic lanes. In addition the Commission may study alternative methods of transportation within a locality, such as a bikeway or sidewalk. The Commission shall further consider the impact that the Highway Trust Fund has on potential revenue sources for alternative transportation and whether the needs of alternative transportation can be met by either the Highway Fund or the Highway Trust Fund.

Sec. 1.13. G.S. 105-445 reads as rewritten:

"§ *105-445. Application of proceeds of gasoline tax.* ~~Except as provided in G.S. 105-446.2 and 136-41.1, the fund derived from the tax herein levied shall be for the exclusive uses of the purposes set out in this Article, and disbursed on vouchers drawn by the Board of Transportation in accordance with the acts of the General Assembly dealing with the subject matter herein referred to.~~ Seventy-five percent (75%) of the revenue collected under this Article shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the Highway Fund and the Highway Trust Fund so that seventy-five percent (75%) of the amount of a refund is charged to the Highway Fund and twenty-five percent (25%) is charged to the Highway Trust Fund."

Sec. 1.14. G.S. 105-446.2(a) reads as rewritten:

"(a) The North Carolina Wildlife Resources Commission shall receive one eighth of one percent (1/8 of 1%) of the net proceeds of the taxes on motor fuels levied under G.S. 105-434 and deposited in the Highway Fund. This percentage amount ~~the same~~ shall be paid in accordance with the accounting periods as set forth under G.S. 105-440(a). As used in this section 'net proceeds' ~~shall mean the entire tax collected less one cent (1¢) per gallon nonrebatable tax required to be segregated by Chapter 1250 of the Session Laws of 1949, as amended by Chapter 46 of the Session Laws of 1965.~~ means the amount of tax deposited in the Highway Fund less the amount of any refunds charged to the Highway Fund."

Sec. 1.15. G.S. 105-449.16 reads as rewritten:

"§ *105-449.16. Levy of ~~tax; purposes; special provisions for certain nonanhydrous ethanol.~~ tax, application of tax proceeds, and exemption for nonanhydrous ethanol.*

"(a) A tax at the rate established pursuant to G.S. 105-434 is ~~hereby~~ imposed upon all ~~fuel sold or delivered by any supplier to any licensed user-seller, or used by any such supplier in any motor vehicle owned, leased or operated by him, or delivered by such supplier directly into the fuel supply tank of a motor vehicle, or imported by a user-seller into, or acquired tax free by a user-seller or user in this State for resale or use for the propulsion of a motor vehicle.~~ fuel:

(1) Sold or delivered by a supplier to a licensed user-seller;

(2) Used by a supplier in a motor vehicle owned, leased, or operated by the supplier;

(3) Delivered by a supplier directly into the fuel supply tank of a motor vehicle;

(4) Imported by a user-seller into this State, by a means other than carrying the fuel in a fuel supply tank of a motor vehicle, for resale or to propel a motor vehicle; or

(5) Acquired tax free by a user-seller or user in this State for resale or to propel a motor vehicle.

A supplier who consigns fuel to a reseller may elect to report and pay the tax due on the fuel when the reseller sells or dispenses the fuel instead of when the supplier delivers the fuel to the reseller. ~~For the purpose of this section, "imported" shall not include fuels brought into this State in the usual tank or receptacle connected with the engine of a motor vehicle.~~

The primary purposes of this levy and this Article are to provide a more efficient and effective method of collecting the tax now imposed and collected pursuant to G.S. 105-435, by providing for the collection of ~~said~~ the tax from the supplier instead of the user. ~~The tax herein provided for is levied for the same purposes as the tax provided for in G.S. 105-435. It is not intended that the tax collected pursuant to this Article shall be in addition to that provided in G.S. 105-435, but the payment of the tax as provided by this Article shall be deemed conclusively to constitute a compliance with the provisions of G.S. 105-435. The tax levied in this section shall be subject to the provisions of section 13 of Chapter 1250 of the Session Laws of 1949, relating to G.S. 105- 435, in that one cent (1¢) of the amount of tax levied on each gallon shall be applied exclusively to the payment of the principal of and the interest on the two hundred million dollars ($200,000,000) State of North Carolina Secondary Road Bonds therein provided for and as further provided in said Chapter 1250 of the Session Laws of 1949.~~ The tax levied by this Article is in lieu of

rather than in addition to the tax levied by G.S. 105-435; payment of the tax levied by this Article constitutes compliance with G.S. 105-435.

(b) ~~Repealed by Session Laws 1985, c. 261, s. 1, effective July 1, 1985.~~ The same percentage amounts of revenue collected under this Article shall be credited to the Highway Fund and to the Highway Trust Fund as are credited to those Funds under G.S. 105-445, and the same percentage amounts of refunds allowed under this Article shall be charged to the Highway Fund and to the Highway Trust Fund as are charged to those Funds under that statute.

(c) Nonanhydrous ethanol is exempt from the tax described in this section if that ethanol is not for sale or distribution."

Sec. 1.16. G.S. 105-449.43 reads as rewritten:

"*§ 105-449.43. ~~Taxes and fees to be paid to Highway Fund.~~ Application of tax proceeds.*

~~All taxes and fees collected under this Article shall be paid to the State Highway Fund.~~ The same percentage amounts of tax revenue collected under this Article shall be credited to the Highway Fund and to the Highway Trust Fund as are credited to those Funds under G.S. 105-445, and the same percentage amounts of refunds or credits allowed under this Article shall be charged to the Highway Fund and the Highway Trust Fund as are charged to those Funds under that statute."

Sec. 1.17. Notwithstanding G.S. 136-176(b), the sum of $11,000,000 for the 1989-90 fiscal year is appropriated from the Highway Trust Fund to the Department of Transportation for administrative expenses of the Trust Fund. This appropriation is in lieu of the allocation under G.S. 136-176(b).

Sec. 1.18. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"*§ 136-44.8. Contract requirements relating to construction materials.*

(a) The Department of Transportation shall require that every contract for construction or repair necessary to carry out the provisions of this Chapter shall contain a provision requiring that steel and cement used or supplied in the performance of the contract or any subcontract thereunder are produced in the United States.

(b) Subsection (a) shall not apply whenever the Department of Transportation determines in writing that this provision required by subsection (a) cannot be complied with because such products are not produced in the United States in sufficient quantities to meet the requirements of such contracts or cannot be complied with because the cost of such products produced in the United States unreasonably exceeds other such products.

(c) The Department of Transportation shall not authorize, provide for, or make payments to any person pursuant to any contract containing the provision required by subsection (a) unless such person has fully complied with such provision."

PART II.

INCREASE CERTIFICATE OF TITLE FEE/ALTERNATE TRANSPORTATION FUNDING.

Sec. 2.1. G.S. 20-85 reads as rewritten:

"§ *20-85. Schedule of fees.*

(a) Except as provided in G.S. 20-68, ~~there shall be paid to the Division for the issuance of certificates of title, transfer of registration and replacement of registration plates fees according to the following schedules:~~ the following fees concerning a certificate of title for a motor vehicle and registration of a motor vehicle shall be paid to the Division. These fees are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title	~~$5.00~~	$35.00
(2) Each application for duplicate or corrected certificate of title	~~7.00~~	10.00
(3) Each application of repossessor for certificate of title	~~5.00~~	10.00
(4) Each transfer of registration	~~4.00~~	10.00
(5) Each set of replacement registration plates	~~9.00~~	10.00
(6) Each application for duplicate registration certificate	~~3.00~~	10.00
(7) Each application for recording supplementary lien	~~3.00~~	10.00
(8) Each application for removing a lien from a certificate of title	~~4.00~~	10.00.

(b) Six-sevenths of the revenue collected under subdivision (a)(1) of this section and all of the revenue collected under the other subdivisions in subsection (a) shall be credited to the North Carolina Highway Trust Fund; the remaining one-seventh of the revenue collected under subdivision (a)(1) shall be credited to the Highway Fund. One-half of the amount credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5."

Sec. 2.2. G.S. 20-85.1 reads as rewritten:

"§ *20-85.1. Registration by mail; one-day title service; fees.*

(a) The owner of a vehicle registered in North Carolina may renew that vehicle registration by mail. A postage and handling fee of one

dollar ($1.00) per vehicle to be registered shall be charged for this service.

(b) The Commissioner and ~~such~~ the employees of the Division ~~as he may designate are hereby authorized to~~ designated by the Commissioner may prepare and deliver upon request a certificate of title, charging a fee of ~~twenty-five dollars ($25.00)~~ fifty dollars ($50.00) for one-day title service, in lieu of the title fee required by ~~G.S. 20-85.~~ G.S. 20-85(a). The fee for one-day title service must be paid by cash or by certified check."

Sec. 2.3. G.S. 136-44.20 is amended by adding a new subsection to read:

"(d) Of the amount appropriated to the Department each year for State construction under the Transportation Improvement Program, the Department may use up to five million dollars ($5,000,000) to develop economical transit alternatives to highway construction. These alternatives may include high occupancy vehicle lanes and rail routes."

PART III.

SALES TAX CHANGES.

Sec. 3.1. The first paragraph of G.S. 105-164.4(1) reads as rewritten:

"(1) At the rate of three percent (3%) of the sales price of each item or article of tangible property when sold at retail in this State, the tax to be computed on total net taxable sales as defined herein but for the purpose of computing the amount due the State each and every taxable retail sale, or retail sales upon which the tax has been collected, or the amount of tax actually collected, whichever be greater and whether or not erroneously collected, shall be included in the computation of tax due the State. Provided, however, that in the case of the sale of any aircraft, railway locomotive, railway car or the sale of any motor vehicle or boat, the tax shall be only at the rate of two percent (2%) of the sales price, but at no time shall the maximum tax with respect to any one such aircraft, railway locomotive, railway car or ~~motor vehicle or~~ boat, including all accessories attached thereto at the time of delivery thereof to the purchaser, be in excess of ~~three hundred dollars ($300.00)~~ one thousand five hundred dollars ($1,500) and at no time shall the maximum tax with respect to a motor vehicle, including all accessories attached when it is delivered to the purchaser, exceed three hundred dollars ($300.00)."

Sec. 3.2. G.S. 105-164.3 reads as rewritten:

"§ *105-164.3. Definitions.*

The ~~words, terms and phrases when used in this Article shall have the meanings ascribed to them in this section~~ following definitions apply in this Article, except when the context clearly indicates a different meaning:

(1) 'Business' shall include any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect. The term 'business' shall not be construed in this Article to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.

(2) ~~'Secretary' shall mean the Secretary of Revenue of the State of North Carolina.~~ Reserved.

(3) 'Consumer' shall mean and include every person storing, using or otherwise consuming in this State tangible personal property purchased or received from a retailer either within or without this State.

(4) 'Cost price' means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever.

(5) 'Engaged in business' shall mean maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, for the selling or delivering of tangible personal property for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser or solicitor operating in this State in such selling or delivering, and the fact that any corporate retailer, agent or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State shall be immaterial. It shall also mean the maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental. It shall also mean making a mail order sale, as defined in subdivision (8a) of this section, if one of the conditions listed in G.S. 105-164.8(b) is met.

(6) 'Gross sales' means the sum total of all retail sales of tangible personal property as defined herein, whether for

cash or credit without allowance for cash discount and without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or any other expenses whatsoever and without any deductions of any kind or character except as provided in this Article.

(7) 'In this (the) State' means within the exterior limits of the State of North Carolina and includes all territory within such limits owned by or ceded to the United States of America.

~~(8)~~(7a) 'Lease or rental' means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or ~~rentee~~ renter for a consideration without transfer of the title of such property.

~~(8a)~~(8) 'Mail order sale' means a sale of tangible personal property, ordered by mail, telephone, computer link, or other similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and transports the property or causes it to be transported to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.

(8a) 'Manufactured home' means a structure that is designed to be used as a dwelling and:

a. Is built on a permanent chassis;

b. Is transportable in one or more sections;

c. When transported, is at least eight feet wide or forty feet long; and

d. When erected on a site, has at least 320 square feet.

(8b) 'Motor vehicle' means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is propelled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment as defined in G.S. 20-4.01, ~~or~~ any vehicle designed primarily for use in work off the ~~highway,~~ highway, or a manufactured home.

(9) 'Net taxable sales' shall mean and include the gross retail sales of the business of the retailer taxed under this Article

after deducting ~~therefrom~~ exempt sales and nontaxable sales.

(10) 'Nonresident retail or wholesale merchant' means a person who does not have a place of business in this State, is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State.

(11) 'Person' includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate or other group, or combination acting as a unit, body politic, or political subdivision, whether public or private or quasi-public and the plural as well as the singular number.

(12) 'Purchase' means acquired for a consideration whether

a. ~~Such~~ The acquisition was effected by a transfer of title or possession, or both, or a license to use or consume;

b. ~~Such transfer shall have been~~ The transfer was absolute or conditional ~~and by whatever means it shall have been~~ regardless of the means by which it was effected; and

c. ~~Such~~ The consideration ~~be~~ is a price or rental in money or by way of exchange or barter.

It shall also include the procuring of a retailer to erect, install or apply tangible personal property for use in this State.

(13) 'Retail' shall mean the sale of any tangible personal property in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.

(14) 'Retailer' means and includes every person engaged in the business of making sales of tangible personal property at retail, either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. 'Retailer' also means a person who makes a mail order sale, as defined in ~~subdivision (8a) of~~ this section, if one of the conditions listed in G.S. 105-164.8(b) is met. Provided, however, that when in the opinion of the Secretary it is necessary for

the efficient administration of this Article to regard any salesmen, solicitors, representatives, consignees, peddlers, truckers or canvassers as agents of the dealers, distributors, consignors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, employers or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers or persons as 'retailers' for the purpose of this Article.

(15) 'Sale' or 'selling' shall mean any transfer of title or possession, or both, exchange, barter, lease, license to use or consume, or rental of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, however effected and by whatever name called, for a consideration paid or to be paid, and includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property or consumed at the place at which such property is prepared, served or sold. A transaction whereby the possession of the property is transferred but the seller retains title or security for the payment of the price shall be deemed a sale.

(16) Except as provided in paragraph f., 'sales price' means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property and that are a part of the sale valued in money whether paid in money or otherwise and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Provided, however, that where a manufacturer, producer or contractor erects, installs or affixes tangible personal property upon real property pursuant to a construction or performance-type contract with or for the benefit of the owner of such real property,

the sales price shall be the cost of such property to the manufacturer, producer or contractor performing the contract. Provided, further:

a. The cost for labor or services rendered in erecting, installing or applying property sold when separately charged shall not be included as a part of the 'sales price';

b. Finance charges, service charges or interest from credit extended under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price shall not be considered a part of the 'sales price' when separately charged;

c. 'Sales price' shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer except that any manufacturers' or importers' excise tax shall be included in the term.

d. 'Sales price' shall not include any amounts charged as deposits on beverage containers which are returnable to vendors for reuse and which amounts are refundable or creditable to vendees, whether or not said deposits are separately charged.

e. 'Sales price' shall not include amounts charged as deposits on automotive, industrial, marine and farm replacement parts which are returnable to vendors for rebuilding or remanufacturing and which amounts are refundable or creditable to vendees, whether or not such deposits are separately charged. This subsection shall not be construed to include tires and batteries.

f. The sales price of tangible personal property sold through a coin-operated vending machine, other than closed-container soft drinks subject to excise tax under Article 2B of this Chapter or tobacco products, is considered to be fifty percent (50%) of the total amount for which the property is sold in the vending machine.

(16a) 'Secretary' means the Secretary of the North Carolina Department of Revenue.

(17) 'Storage' means and includes any keeping or retention in this State for any purpose by the purchaser thereof, except sale in the regular course of business, of tangible personal property purchased from a retailer.

(18) 'Use' means and includes the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser thereof and includes, but is not

limited to, any withdrawal from storage, installation, affixation to real or personal property, exhaustion or consumption of tangible personal property by the owner or purchaser thereof, but shall not include the sale of tangible personal property in the regular course of business.

(19) 'Storage' and 'Use'; Exclusion. -- 'Storage' and 'use' do not include the keeping, retaining or exercising of any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use by said purchaser thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser thereof solely outside the State.

(20) 'Tangible personal property' means and includes personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses. The term 'tangible personal property' shall not include stocks, bonds, notes, insurance or other obligations or securities, nor shall it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes all 'canned' or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held, or existing for general or repeated sale, lease, or license to use or consume. The term does not include the design, development, writing, translation, fabrication, lease, license to use or consume, or transfer for a consideration of title or possession of a custom computer program, other than a basic operational program, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program.

As used in this subdivision:

a. 'Basic operational program' or 'control program' means a computer program that is fundamental and necessary to the functioning of a computer. A basic operational program is that part of an operating

system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices, and processing programs. A processing program is used to develop and implement the specific applications the computer is to perform.

b. 'Computer program' means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

c. 'Custom computer program' means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:

1. Preparation or selection of the programs for the customer's use requires an analysis of the customer's requirements by the vendor; or
2. The program requires adaptation by the vendor to be used in a particular make and model of computer utilizing a specified output device.

d. 'Storage media' means punched cards, tapes, disks, diskettes, or drums.

(21) 'Taxpayer' means any person liable for taxes under this Article.

(22) 'Use tax' means and includes the tax imposed by Part 3 in Division II of this Article.

(23) 'Wholesale merchant' shall mean every person who engages in the business of buying or manufacturing any tangible personal property and selling same to registered retailers, wholesalers and nonresident retail or wholesale merchants for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this Article any person, firm, corporation, estate or trust engaged in the business of manufacturing, producing, processing or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, or any other place or

places, separate and apart from the place of manufacture or production, for the sale or distribution of its products (other than bakery products) to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a 'wholesale merchant.'

(24) 'Wholesale sale' shall mean a sale of tangible personal property by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale.

(25) 'Utility' means an electric power company, a gas company, or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll or private telecommunications service as defined by G.S. 105-120(a) or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Sec. 3.3. G.S. 105-164.4 reads as rewritten:

"§ *105-164.4.* ~~*Imposition of tax; retailer.*~~ *Tax imposed on retailers.*

~~There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person who engages in the business of selling tangible personal property at retail, renting or furnishing tangible personal property or the renting and furnishing of rooms, lodgings and accommodations to transients, in this State, the same to be collected and the amount to be determined by the application of the following rates against gross sales and rentals, to wit:~~

~~(1) At the rate of three percent (3%) of the sales price of each item or article of tangible property when sold at retail in this State, the tax to be computed on total net taxable sales as defined herein but for the purpose of computing the amount due the State each and every taxable retail sale, or retail sales upon which the tax has been collected, or the amount of tax actually collected, whichever be greater and whether or not erroneously collected, shall be included in the computation of tax due the State. Provided, however, that in the case of the sale of any aircraft, railway locomotive, railway car or the sale of any motor vehicle or boat, the tax shall be only at the rate of two percent (2%) of the sales price, but at no time shall the maximum tax with respect to any one such aircraft, railway locomotive, railway car or~~

~~motor vehicle or boat, including all accessories attached thereto at the time of delivery thereof to the purchaser, be in excess of three hundred dollars ($300.00).~~

~~The separate sale of a new motor vehicle chassis and a new motor vehicle body to be installed thereon, whether by the same retailer or by different retailers shall be subject only to the tax herein prescribed with respect to a single motor vehicle. No tax shall be imposed upon a body mounted on the chassis of a motor vehicle which temporarily enters the State for the purpose of having such body mounted thereon by the manufacturer thereof.~~

~~Notwithstanding G.S. 105-164.3(16) and regardless whether the seller is a retailer of motor vehicles, the sales price of a motor vehicle is the gross sales price of the motor vehicle less any allowance given for a motor vehicle taken in trade as part of the consideration for the purchased motor vehicle.~~

~~The tax levied under this section applies to all retail sales of motor vehicles regardless whether the seller is engaged in business as a retailer of motor vehicles or whether a tax on the sale of the vehicle has previously been paid under this Article. A purchaser of a motor vehicle from a retailer shall pay the tax imposed under this Article to the retailer, who is liable for collecting and remitting the tax to the Secretary. A purchaser of a motor vehicle is liable for payment of the tax imposed by this Article if the seller is not a retailer. The purchaser shall pay the tax to the Commissioner of Motor Vehicles when applying for a certificate of title for the vehicle. When property is transferred by an individual to a partnership or corporation, and no gain or loss arises as provided by Section 351 or Section 721 of the Code, such transfer is not a sale for the purpose of this subdivision if the transfer is incident to the organization of the partnership or corporation.~~

~~When applying for a certificate of title, a purchaser of a motor vehicle from a seller who is not a retailer shall certify in writing the sales price of the purchased motor vehicle. A purchaser who knowingly makes a false certification of the sales price is guilty of a misdemeanor.~~

~~The Commissioner of Motor Vehicles may not issue a certificate of title for a motor vehicle sold by a seller who is not a retailer unless the tax imposed by this section is paid when the purchaser of the vehicle applies for a certificate of~~

~~title. The Commissioner shall remit taxes collected by him under this subsection to the Secretary.~~

~~Persons who lease or rent motor vehicles shall collect and remit the tax imposed by this Article on the separate retail sale of a motor vehicle in addition to the tax imposed on the proceeds from the lease or rental of the motor vehicle.~~

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales, or gross receipts from the lease or rental of tangible personal property, as appropriate:

(1) At the rate of three percent (3%) of the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) At the rate of two percent (2%) of the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser, not to exceed three hundred dollars ($300.00). Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) At the rate of two percent (2%) of the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser.

~~Provided further, the tax shall be only at~~

(1c) At the rate of one percent (1%) of the sales price on the following items:

a. Horses or mules by whomsoever sold.

b. Semen to be used in the artificial insemination of animals.

c. Sales of fuel, other than electricity or piped natural gas, to farmers to be used by them for any farm purposes other than preparing food, heating dwellings and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed herein.

d. Sales of fuel, other than electricity or piped natural gas, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased used at any one time shall not in any manner

be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed herein.

e. Sales of fuel, other than electricity or piped natural gas, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

~~Provided further, the tax shall be only at~~

(1d) At the rate of one percent (1%) of the sales price, subject to a maximum tax of eighty dollars ($80.00) per article, on the following items:

~~g.~~ a. Sales of machines and machinery, whether animal or motor drawn or operated, and parts and accessories for such machines and machinery to farmers for use by them in the planting, cultivating, harvesting or curing of farm crops, and sales of machines and machinery and parts and accessories for such machines and machinery to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in the production of dairy products, poultry, eggs or livestock, except such machines, machinery, equipment, parts, and accessories that come within the provisions of G.S. 105-164.13(4c).

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular

implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

~~h.~~ b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term 'manufacturing industries and plants' does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

~~i.~~ c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

~~j.~~ d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

~~k.~~ e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.

~~l.~~ f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

~~m.~~ g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

~~n. Repealed by Session Laws 1983, c. 805, s. 2, effective July 1, 1983.~~

~~o.~~ h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

~~p. Repealed by Session Laws 1983, c. 805, s. 2,effective July 1, 1983.~~

~~q.~~ i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

(2) At the ~~rate of three percent (3%) of the gross proceeds derived from the lease or rental of tangible personal property as defined herein, where the lease or rental of such property is an established business, or the same is incidental or germane to said business; except that whenever a rate of less than three percent (3%) is applicable to a sale of property which is leased or rented, the lower rate of tax shall be due on such lease or rental proceeds.~~ applicable percentage rate of the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.

(3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. There is levied upon every such retailer a tax of three percent (3%) of the gross receipts derived from the rental of any ~~room or~~ rooms, lodgings, or accommodations furnished to transients for a consideration.

This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term 'persons who rent to transients' means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including 'real estate brokers' as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(4) Every person, firm or corporation engaged in the business of operating a pressing club, cleaning plant, hat-blocking establishment, dry-cleaning plant, laundry (including wet or damp wash laundries and businesses known as launderettes and launderalls), or any ~~similar-type~~ similar business, or engaged in the business of renting clean linen or towels or wearing apparel, or any ~~similar-type~~ similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or rental business for any of the aforenamed businesses, shall be considered 'retailers' for the purposes of this Article. There is hereby levied upon every such person, firm or corporation a tax of three percent (3%) of the gross receipts derived from services rendered in engaging in any of the occupations or businesses named in this subdivision, and every person, firm or corporation subject to the provisions of this subdivision shall register and secure a license in the manner hereinafter provided in this section, and, insofar as practicable, all other provisions of this Article shall be applicable with respect to the tax herein provided for. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The taxes levied in this subdivision are additional privilege or license taxes for the privilege of engaging in the occupations or businesses named herein. Any person, firm or corporation engaged in cleaning, pressing, hat blocking, laundering for, or supplying clean linen or towels or wearing apparel to, another person, firm or corporation engaged in soliciting shall not be required to pay the three percent (3%) tax on its gross receipts derived through such solicitor, if the soliciting person, firm or corporation has registered with the Department, secured the license hereinafter required and has paid the tax at the rate

of three percent (3%) of the total gross receipts derived from business solicited.

(4a) At the rate of three percent (3%) of the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. 105-120(a). A person who operates a utility is considered a retailer under this Article.

(4b) A person who sells tangible personal property at a flea market, other than his own household personal property, is considered a retailer under this Article. A tax is levied on that person at the rate of three percent (3%) of the sales price of each article sold by him at the flea market. A person who leases or rents space at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space furnishes evidence that he has obtained the license required by this Article. A person who leases or rents space at a flea market shall keep records of retailers to whom he has leased or rented space at the market. As used in this subdivision, the term 'flea market' means a place where space is rented to a person for the purpose of selling tangible personal property.

(4c) At the rate of six and one-half percent (6 1/2%) of the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(a) that both originate from and terminate in the State which are not subject to the privilege tax under G.S. 105-120. Any business entity that provides the service outlined above is considered a retailer under this Article. This subdivision shall not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

~~(5)~~ (b) The ~~said~~ tax levied in this section shall be collected from the retailer ~~as defined herein~~ and paid by him at the time and in the manner as hereinafter provided. Provided, however, that any person engaging or continuing in business as a retailer shall pay the tax required on the net taxable sales of such business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of tangible personal property in such form as may be accurately and conveniently checked by the Secretary or his duly authorized agent. If such records are not kept separately the tax shall be paid as a retailer on the gross sales of business and the exemptions and exclusions provided by this Article shall not be allowed. ~~(6)~~ The tax ~~so~~ levied in this section is ~~and shall be~~ in

addition to all other taxes whether levied in the form of excise, license or privilege or other taxes.

~~(7)~~ (c) Any person who ~~shall engage or continue~~ engages or continues in any business for which a privilege tax is imposed by this Article shall immediately after July 1, 1979, apply for and obtain from the Secretary upon payment of the sum of five dollars ($5.00) a license to engage in and conduct such business upon the condition that ~~such~~ the person shall pay the tax accruing to the State ~~of North Carolina under the provisions of this Article and he~~ under this Article; the person shall thereby be duly licensed and registered to engage in and conduct such business. Except as hereinafter provided, a license issued under this subsection shall be a continuing license until revoked for failure to comply with the provisions of this Article. However, any person who has heretofore applied for and obtained ~~such~~ the license, ~~and such~~ if the license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.

Any person who ~~shall cease~~ ceases to be engaged in any business for which a privilege tax is imposed by this Article, and who ~~shall remain~~ remains continuously out of business for a period of five years shall apply for and obtain a new license from the Secretary upon the payment of a tax of five dollars ($5.00), and any license previously issued under this section shall be ~~null, void and of no effect.~~ void. The burden of proof after such period shall be upon the taxpayer to show that he did engage in such ~~activity~~ business within the period, and that no new license is required.

A retailer who sells tangible personal property at a flea market shall conspicuously display his sales tax license when making sales at the flea market."

Sec. 3.4. G.S. 105-164.6 reads as rewritten:

"§ *105-164.6. Imposition of tax.*

~~An excise tax is hereby levied and imposed on the storage, use or consumption in this State of tangible personal property purchased within and without this State for storage, use or consumption in this State, the same to be collected and the amount to be determined by the application of the following rates:~~

~~(1) At the rate of three percent (3%) of the cost price of each item or article of tangible personal property when the same is not sold but used, consumed, distributed or stored for use or consumption in this State; except that, whenever a rate of less than three percent (3%) is applicable under the sales tax schedule set out in G.S. 105-164.4 to the sale at retail of an item or article of tangible personal property, the same rate, and maximum tax if any, shall be used in computing~~

~~any use tax due under this subdivision. The separate sale of a new motor vehicle chassis and a new motor vehicle body to be installed thereon, whether by the same retailer or by different retailers, shall be subject only to the tax herein prescribed with respect to a single motor vehicle.~~

(a) An excise tax at the following percentage rates is imposed on the storage, use, or consumption in this State of tangible personal property purchased inside or outside the State for storage, use, or consumption in the State:

(1) At the applicable percentage rate of the cost price of each item or article of tangible personal property that is stored, used, or consumed in this State. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is stored, used, or consumed.

(2) At the ~~rate of three percent (3%) of the monthly lease or rental price paid by the lessee or rentee, or contracted or agreed to be paid by the lessee or rentee, to the owner of the tangible personal property; except that, whenever a rate of less than three percent (3%) is applicable under the sales tax schedule set out in G.S. 105-164.4 to the sale at retail of an item or article of tangible personal property, then the same rate, and maximum tax if any, shall be used in computing any use tax due under this subdivision.~~ applicable percentage rate of the monthly lease or rental price paid, contracted, or agreed to be paid by the lessee or renter to the owner of tangible personal property that is stored, used, or consumed in this State. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a lease or rental of the property that is stored, used, or consumed.

~~(3)~~ (b) There is hereby levied and there shall be collected from every person, firm, or corporation, an excise tax of three percent (3%) of the purchase price of all tangible personal property purchased or used which shall enter into or become a part of any building or other kind of structure in this State, including all materials, supplies, fixtures and equipment of every kind and description which shall be annexed thereto or in any manner become a part thereof. ~~Said~~ The tax shall be levied against the purchaser of such property. Provided, that where the purchaser is a contractor, the contractor and owner shall be jointly and severally liable for ~~said~~ the tax, but the liability of the owner shall be deemed satisfied if before final settlement between them the contractor furnishes to the owner an affidavit certifying that ~~said~~ the tax has been paid. Provided further, that where the purchaser is a subcontractor, the contractor and subcontractor shall be jointly and severally liable for ~~said~~ the tax, but the liability of the contractor

shall be deemed satisfied if before final settlement between them the subcontractor furnishes to the contractor an affidavit certifying that ~~said~~ the tax has been paid.

~~(3a) Every person, firm, or corporation that purchases or acquires a motor vehicle shall pay a tax at the rate of two percent (2%) of the sales price of the vehicle, not to exceed three hundred dollars ($300.00) per vehicle. This tax shall be paid to the Commissioner of Motor Vehicles when applying for a certificate of title or registration plate for the vehicle. A purchaser who furnishes to the Commissioner of Motor Vehicles a certificate from a retailer of motor vehicles engaged in business in this State stating that the purchaser has paid the tax levied on the vehicle by this Article to the retailer is relieved of liability for the tax. No certificate of title, or registration and license plate or plates shall be issued for any motor vehicle purchased or acquired for use on the streets and highways of this State unless and until the tax provided for under this Article on motor vehicles has been paid. Nothing herein is intended to relieve any retailer of motor vehicles engaged in business in this State from his liability for collecting and remitting sales or use tax on his sales of motor vehicles for use by the purchasers thereof in this State and no retailer shall be absolved of this liability for his failure to collect the tax from such purchasers. The Commissioner of Motor Vehicles shall remit use taxes collected by him under this subdivision to the Secretary.~~

~~The tax levied under this section applies to all owners of motor vehicles, regardless whether the owner purchased or acquired the vehicle from a retailer of motor vehicles and regardless whether a tax has previously been paid under this Article with respect to the vehicle.~~

~~An owner of a motor vehicle acquired from a seller who is not a retailer shall certify the sales price of the vehicle as provided in G.S. 105-164.4(1).~~

~~Persons who lease or rent motor vehicles shall collect and remit the tax imposed by this Article on the separate retail sale of a motor vehicle in addition to the tax imposed on the proceeds from the lease or rental of the motor vehicle.~~

~~(4)~~ (c) Where a retail sales tax has already been paid with respect to ~~said~~ tangible personal property in this State by the purchaser thereof, ~~said~~ the tax shall be credited upon the tax imposed by this Part. Where a retail sales and use tax is due and has been paid with respect to ~~said~~ tangible personal property in another state by the purchaser ~~thereof~~ for storage, use or consumption in this State, ~~said~~ the tax shall be credited upon the tax imposed by this Part. If the amount of tax paid to another state is less than the amount of tax imposed by this Part, the purchaser shall pay to the Secretary an amount sufficient to make the tax paid to the other state and this State equal to the amount

imposed by this Part. The Secretary of Revenue shall require such proof of payment of tax to another state as he deems ~~to be necessary and proper.~~ necessary. No credit shall be given under this ~~subdivision~~ subsection for sales or use taxes paid in another state if that state does not grant similar credit for sales taxes paid in North Carolina.

~~(5)~~ (d) Every person storing, using or otherwise consuming in this State tangible personal property purchased or received at retail either within or without this State shall be liable for the tax imposed by this Article and the liability shall not be extinguished until the tax has been paid to this State. Provided, however, that a receipt from a registered retailer engaged in business in this State given to the purchaser in accordance with the provisions of this Article shall be **prima facie** sufficient to relieve the purchaser from liability for the tax to which such receipt may refer and the liability of the purchaser shall be extinguished upon payment of the tax by any retailer from whom he has purchased ~~said~~ the property.

~~(6)~~ (e) Except as provided herein the tax so levied is and shall be in addition to all other taxes whether levied in the form of excise, license, privilege or other taxes.

~~(7)~~ (f) Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use or consumption in this State shall immediately after July 1, 1979, apply for and obtain from the Secretary upon the payment of the sum of five dollars ($5.00) a license to engage in and conduct such business upon the condition that such person shall pay the tax accruing to the State of North Carolina under the provisions of this Article, and he shall thereby be duly licensed and registered to engage in and conduct such business. Except as hereinafter provided, a license issued under this subsection shall be a continuing license until revoked for failure to comply with the provisions of this Article. However, any person who has heretofore applied for and obtained such license, and such license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.

Any person who ~~shall cease~~ ceases to be engaged in any business for which a tax is imposed by this Article, and who ~~shall remain~~ remains continuously out of business for a period of five years shall apply for and obtain a new license from the Secretary upon the payment of a tax of five dollars ($5.00), and any license previously issued under this section shall be ~~null, void and of no effect.~~ void. The burden of proof after such period shall be upon the taxpayer to show that he did engage in such activity within the period, and that no new license is required.

~~(8)~~ (g) Notwithstanding any other provisions of this Article, a use tax, at the applicable use tax rate, as hereinbefore provided, is hereby levied upon the storage or use in this State of any motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this State for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof. The owner or, if the property is leased the lessee of any such motor vehicle, machine, machinery, tools or other equipment shall be liable for the tax provided for in this paragraph, to be computed as set out below. The useful life of such motor vehicles, machines, tools or other equipment shall be determined by the Secretary in accordance with the experience and practices of the building and construction trades. Said use tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this State bears to the total useful life thereof. Such tax shall become due immediately upon such property being brought into this State, and in the absence of satisfactory evidence as to the period of use intended in this State, it shall be presumed that such property will remain in this State for the remainder of its useful life.

A credit is allowed against the tax imposed on the use of property under this subsection for any retail sales or use tax paid on the property to another state. The amount of the credit allowed is the proportion of the sales or use tax paid as the time of use in this State bears to the total useful life of the property. A credit is also allowed against the local use taxes imposed in this State for any local retail sales or use tax paid on the property to a locality in another state. The amount of the credit allowed is the proportion of the local sales or use tax paid as the time of use in this State bears to the total useful life of the property. No credit is allowed, however, if the state to which, or in which a locality to which, a retail sales or use tax was paid does not allow a similar credit or grant an exemption for property brought into that state from this State. ~~All provisions of this Article not directly in conflict with the provisions of this paragraph shall be applicable with respect to the matters herein set forth. The provisions of this paragraph shall not be applicable with respect to sales of such property within this State or to the use, storage or consumption of such property when purchased for use in this State, and in such cases the full sales or use tax shall be paid as in all other cases, irrespective of the period of intended use in this State.~~

This subsection does not apply to sales of property in this State or to the use, storage, or consumption of property when purchased for use in this State. In these cases, the full sales or use tax, or the privilege tax levied by Article 5A of this Chapter, as appropriate, shall be paid. For purposes of this subsection, the use tax rate of tax on a motor vehicle is considered to be three percent (3%), not to exceed the maximum tax set in G.S. 105-167(a). All provisions of this Article, including the administrative provisions, apply to the tax imposed by this subsection unless they directly conflict with this subsection."

Sec. 3.5. G.S. 105-164.13(16) reads as rewritten:

"(16) Sales of used articles ~~other than motor vehicles~~ taken in trade, or a series of trades, as a credit or part payment on the sale of a new ~~article, provided the tax levied in this Article is paid on the gross sales price of the new article. In the interpretation of this subsection, new article shall be taken to mean~~ article. 'New article' means the original stock in trade of the ~~merchant~~ merchant, and ~~shall~~ is not ~~be~~ limited to newly manufactured articles. The resale of articles ~~other than motor vehicles,~~ repossessed by the vendor shall likewise be exempt from gross sales taxable under this Article."

Sec. 3.6. G.S. 105-164.13(32) reads as rewritten:

"(32) Sales of motor vehicles, the separate sales of a motor vehicle body and a motor vehicle chassis when the body is to be mounted on the chassis, and the sale of a body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis. ~~vehicles, as defined in G.S. 105-164.3(8a),to nonresident purchasers for immediate transportation to and use in another state in which such vehicles are required to be registered, provided the seller obtains from the purchaser and furnishes to the Secretary of Revenue an affidavit stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the Secretary may require, and provided further that no exemption shall be allowed unless the affidavit is filed with the seller's sales and use tax report for the month during which the sale is made and such report is timely filed. For sales made by a seller who is not a retailer, this exemption applies if the purchaser furnishes the Secretary an affidavit containing the~~

~~information otherwise required from a retailer within 45 days of the date.~~"

Sec. 3.7. G.S. 105-467 reads as rewritten:

"§ *105-467. ~~Sales tax imposed; limited to items on which the State now imposes a three percent sales tax.~~ Scope of sales tax.*

The sales tax which may be imposed under this Article is limited to a tax at the rate of one percent (1%) of:

(1) The sales price of those articles of tangible personal property now subject to the three percent (3%) sales tax imposed by the State under G.S. ~~105-164.4(1)~~ 105-164.4(a)(1) and (4b);

(2) The gross receipts derived from the lease or rental of tangible personal property ~~where~~ when the lease or rental of ~~such~~ the property is ~~an established business now~~ subject to the three percent (3%) sales tax imposed by the State under G.S. ~~105-164.4(2);~~ 105-164.4(a)(2);

(3) The gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar accommodations now subject to the three percent (3%) sales tax imposed by the State under G.S. ~~105-164.4(3);~~ 105-164.4(a)(3); and

(4) The gross receipts derived from services rendered by laundries, dry cleaners, cleaning plants and similar type businesses now subject to the three percent (3%) sales tax imposed by the State under G.S. ~~105-164.4(4).~~ 105-164.4(a)(4).

The sales tax authorized by this Article does not apply to sales ~~by a utility of electricity, piped natural gas, local, toll, or private telecommunications services as defined by G.S. 105-120(a).~~ that are taxable by the State under G.S. 105-164.4 but are not specifically included in subdivisions (1) through (4) of this section.

The exemptions and exclusions contained in G.S. 105-164.13 and the refund provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county shall have no authority, with respect to the local sales and use tax imposed under this Article to change, alter, add to or delete any refund provisions contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13 or which are elsewhere provided for.

The local sales tax authorized to be imposed and levied under the provisions of this Article shall ~~be applicable~~ apply to such retail sales, leases, rentals, rendering of services, furnishing of rooms, lodgings or accommodations and other taxable transactions which are made,

furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients. For the purpose of this Article, the situs of a transaction is the location of the retailer's place of business."

Sec. 3.8. G.S. 105-468 reads as rewritten:

"§ *105-468. ~~Use tax imposed; limited to items upon which the State now imposes a three percent use tax.~~ Scope of use tax.*

The use tax which may be imposed under this Article shall be at the rate of one percent (1%) of the cost price of each item or article of tangible personal property when ~~the same~~ it is not sold but used, consumed or stored for use or consumption in the taxing county, except that no tax shall be imposed upon ~~such~~ tangible personal property when~~, if the property were subject to the use tax imposed by G.S. 105-164.6, such property would be taxed by the State of North Carolina at a rate less than three percent (3%).~~ the property would be taxed by the State at a rate of other than three percent (3%) if it were taxable under G.S. 105-164.6.

Every retailer engaged in business in this State and in the taxing county and required to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent (1%) use tax when such property is to be used, consumed or stored in the taxing county, ~~said~~ one percent (1%) use tax to be collected concurrently with the State's use tax; but no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect the one percent (1%) use tax. The use tax contemplated by this section shall be levied against the purchaser, and ~~his~~ the purchaser's liability for ~~such~~ the use tax shall be extinguished only upon ~~his~~ payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary of Revenue, or to the taxing county, as appropriate, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to ~~said~~ tangible personal property by the ~~purchaser thereof,~~ purchaser, either in another taxing county within the State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, ~~said tax~~ the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary of Revenue or to the taxing county, as appropriate, an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing ~~county hereunder.~~ county. The Secretary of Revenue or the taxing

county, as appropriate, may require such proof of payment in another taxing county or jurisdiction as is deemed to be ~~necessary and proper.~~ necessary. The use tax levied ~~hereunder shall not be~~ under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."

Sec. 3.9. Section 4 of Chapter 1096 of the 1967 Session Laws, as amended, is amended as follows:

(1) By rewriting the heading to the section to read: "Scope of Sales Tax.";

(2) By deleting the reference "105-164.4(1)" and substituting the reference "105-164.4(a)(1) and (4b)";

(3) By rewriting subpart (2) of the first paragraph to read:

"(2) the gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(a)(2)";

(4) By deleting the references "105-164.4(3)" and "105-164.4(4)" and substituting the references "105-164.4(a)(3)" and "105-164.4(a)(4)" respectively; and

(5) By rewriting the last sentence of the first paragraph of that section to read:

"The taxes authorized by this division do not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically listed in this section."

Sec. 3.10. Section 5 of Chapter 1096 of the 1967 Session Laws, as amended, is amended in the first sentence by deleting the phrase "when, if the property were subject to the use tax imposed by G.S. 105-164.6, such property would be taxed by the State of North Carolina at a rate less than three percent (3%)" and substituting the phrase "when the property would be taxable by the State at a rate of other than three percent (3%) if it were taxable under G.S. 105-164.6".

PART IV.

HIGHWAY USE TAX.

Sec. 4.1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5A.

"North Carolina Highway Use Tax.

"§ *105-165. Definitions.*

The following definitions and the definitions in G.S. 105-164.3 apply to this Article:

(1) 'Commissioner' means the Commissioner of Motor Vehicles.

(2) 'Division' means the Division of Motor Vehicles, Department of Transportation.

"§ *105-166. Highway use tax imposed.*

A tax is imposed on the privilege of using the highways of this State. This tax is in addition to all other taxes and fees imposed.

"§ *105-167. Rate of tax.*

(a) Amount. The rate of the use tax imposed by this Article is three percent (3%) of the retail value of a motor vehicle for which a certificate of title is issued. The tax is payable as provided in G.S. 105-168. The tax may not be less than forty dollars ($40.00) for each motor vehicle for which a certificate of title is issued, unless the issuance of a title for the vehicle is exempt from tax under G.S. 105-170(a). The tax may not be more than one thousand dollars ($1,000) for each motor vehicle for which a certificate of title is issued.

(b) Retail Value. The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle, including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a motor vehicle taken in trade as a partial payment for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a seller who is not a retailer is the value of the vehicle set in a schedule of values adopted by the Commissioner, less the amount of any allowance given by the seller for a motor vehicle taken in trade as a partial payment for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the value of the vehicle set in a schedule of values adopted by the Commissioner.

(c) Schedules. In adopting a schedule of values for motor vehicles, the Commissioner shall adopt a schedule whose values do not exceed the wholesale values of motor vehicles as published in a recognized automotive reference manual.

"§ *105-168. Payment of tax.*

(a) Method. The tax imposed by this Article must be paid to the Commissioner when applying for a certificate of title for a motor vehicle. The Commissioner may not issue a certificate of title for a vehicle until the tax imposed by this Article has been paid. The tax may be paid in cash or by check.

(b) Sale by Retailer. When a certificate of title for a motor vehicle is issued because of a sale of the motor vehicle by a retailer, the

applicant for the certificate of title must attach the bill of sale for the motor vehicle to the application. A retailer who sells a motor vehicle may collect from the purchaser of the vehicle the tax payable upon the issuance of a certificate of title for the vehicle, apply for a certificate of title on behalf of the purchaser, and remit the tax due on behalf of the purchaser.

"*§ 105-169. Alternate tax for those who rent or lease motor vehicles.*

(a) Election. A retailer who is engaged in the business of leasing or renting motor vehicles may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-167 when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts of the lease or rental of the vehicle. Like the tax imposed by G.S. 105-167, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents the vehicle.

(b) Rate. The tax rate on the gross receipts of the lease or rental of a motor vehicle is eight percent (8%), unless the vehicle is leased or rented to the same person for a period of more than 90 continuous days. In that circumstance, the tax is eight percent (8%) for the first 90 days the vehicle is leased or rented to the same person and is three percent (3%) for the remainder of the period during which the vehicle is leased or rented to that person. The maximum tax in G.S. 105-167(a) applies to the lease or rental of a motor vehicle when the vehicle is leased or rented to the same person for more than 90 continuous days. Tax paid by a person from the first day of a continuous lease or rental period applies toward the maximum tax.

(c) Method. A retailer who elects to pay tax on the gross receipts of the lease or rental of a motor vehicle shall make this election when applying for a certificate of title for the vehicle. To make the election, the retailer shall complete a form provided by the Division giving information needed to collect the alternate tax based on gross receipts. Once made, an election is irrevocable.

(d) Reporting. The Division shall notify the Secretary of Revenue of a retailer who makes the election under this section. A retailer who makes this election shall report and remit to the Secretary the tax on the gross receipts of the lease or rental of the motor vehicle as if the gross receipts were taxable under G.S. 105-164.4(a)(2).

"*§ 105-170. Exemptions from highway use tax.*

(a) Full Exemptions. The tax imposed by this Article does not apply when a certificate of title is issued as the result of the transfer of a motor vehicle to the insurer of the vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.

(b) Partial Exemptions. Only the minimum tax imposed by this Article applies when a certificate of title is issued as a result of the transfer of a motor vehicle:

(1) By a gift between a husband and wife or a parent and child.

(2) By will or intestacy.

(3) By a distribution of marital property as a result of a divorce.

(4) To one of the following for the purpose of resale:

a. A motor vehicle retailer.

b. A secured party who has filed a security interest in the motor vehicle with the Department of the Secretary of State.

(5) To a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under section 351 or section 721 of the Internal Revenue Code, or to a corporation by merger or consolidation in accordance with G.S. 55-110.

(6) To the same owner to reflect a change in the owner's name.

(c) Out-of-state Vehicles. A maximum tax of one hundred dollars ($100.00) applies when a certificate of title is issued for a motor vehicle that, at the time of applying for a certificate of title, is and has been titled in another state for at least 90 days.

"*§ 105-171. Credit for tax paid in another state.*

A person who, within 90 days before applying for a certificate of title for a motor vehicle on which the tax imposed by this Article is due, has paid a sales tax, an excise tax, or a tax substantially equivalent to the tax imposed by this Article on the vehicle to a taxing jurisdiction outside this State is entitled to a credit against the tax due under this Article for the amount of tax paid to the other jurisdiction. The credit may not reduce the person's liability under this Article below the minimum forty-dollar ($40.00) tax.

"*§ 105-172. Refund for return of purchased motor vehicle.*

When a purchaser of a motor vehicle returns the motor vehicle to the seller of the motor vehicle within 90 days after the purchase and receives a vehicle replacement for the returned vehicle or a refund of the price paid the seller, whether from the seller or the manufacturer of the vehicle, the purchaser may obtain a refund of the privilege tax paid on the certificate of title issued for the returned motor vehicle, less the minimum tax of forty dollars ($40.00).

To obtain a refund, the purchaser must apply to the Division for a refund within 30 days after receiving the replacement vehicle or refund of the purchase price. The application must be made on a form prescribed by the Commission and must be supported by documentation from the seller of the returned vehicle.

"*§ 105-173. Disposition of tax proceeds.*

Taxes collected under this Article at the rate of eight percent (8%) shall be deposited in the General Fund. Taxes collected under this Article at the rate of three percent (3%) shall be deposited in the North Carolina Highway Trust Fund. In each fiscal year the State Treasurer shall transfer the sum of one hundred seventy million dollars ($170,000,000) of the taxes deposited in the Trust Fund to the General Fund by transferring one-fourth of this amount at the end of each quarter in the fiscal year.

"*§ 105-174. Penalties and remedies.*

The penalties that apply to a failure to pay State sales and use taxes apply to a failure to pay the tax levied by this Article. In addition, if a check offered in payment of the tax imposed by this Article is returned unpaid and the tax for which the check was offered is not paid within 30 days after the Commissioner demands its payment, the Commissioner may revoke the registration plate of the vehicle for which a certificate of title was issued when the check was offered.

In applying the provisions of Article 9 of this Chapter to the tax levied by this Article, the Commissioner shall exercise the power conferred upon the Secretary. A taxpayer who appeals the tax imposed by this Article shall appeal to the Commissioner or the Commissioner's designee instead of to the Secretary."

Sec. 4.2. Effective July 1, 1993, G.S. 105-167(a), as enacted by this act, reads as rewritten:

"(a) Amount. The rate of the use tax imposed by this Article is three percent (3%) of the retail value of a motor vehicle for which a certificate of title is issued. The tax is payable as provided in G.S. 105-168. The tax may not be less than forty dollars ($40.00) for each motor vehicle for which a certificate of title is issued, unless the issuance of a title for the vehicle is exempt from tax under G.S. 105-170(a). The tax may not be more than ~~one thousand dollars ($1,000)~~ one thousand five hundred dollars ($1,500) for each motor vehicle for which a certificate of title is issued."

Sec. 4.3. Notwithstanding G.S. 105-173, as enacted by this act, in fiscal year 1989-90, the State Treasurer shall transfer from the Highway Trust Fund to the General Fund, the sum of two hundred seventy-nine million four hundred thousand dollars ($279,400,000) of the tax revenue deposited in the Trust Fund under that statute by transferring one-third of this amount at the end of the second, third, and fourth quarters in the fiscal year. In addition, in fiscal year 1990-91, the State Treasurer shall transfer from the Highway Trust Fund to the General Fund the sum of three hundred fifty-six million dollars ($356,000,000) of the tax revenue deposited in the Trust Fund under G.S. 105-173 by transferring one-fourth of this amount at the end of each quarter in the fiscal year. The transfers required under

this section are in lieu of the transfers that would otherwise be made under G.S. 105-173.

PART V.

MOTOR FUEL TAX INCREASE.

Sec. 5.1. G.S. 105-434(a) reads as rewritten:

"(a) Tax. -- An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at ~~the rate of fourteen cents (14¢) per gallon plus three percent (3%) of the average wholesale price of motor fuel, as determined semiannually by the Secretary of Revenue from~~ a flat rate of seventeen cents (17¢) per gallon, plus a variable rate of either three and one-half cents (3 1/2¢) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. The Secretary of Revenue shall semiannually determine the average wholesale price of motor fuel using information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review,' or ~~on~~ equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

To facilitate ~~collection~~ administration of the motor fuel tax, the Secretary shall convert the ~~percentage rate~~ wholesale percentage component to a cents-per-gallon rate ~~to be in effect during the six-month period beginning each January 1 and July 1~~. The rate ~~to be in effect during~~ for the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate ~~to be in effect during~~ for the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10¢). If the cents-per-gallon rate computed by the Secretary is exactly between two tenths of a cent, the rate shall be rounded up to the higher of the two."

Sec. 5.2. G.S. 105-446 reads as rewritten:

"*§ 105-446. Refund for tax on motor fuel used other than to propel a motor vehicle.*

A person who purchases and uses motor fuel for a purpose other than to operate a licensed motor vehicle may receive an annual refund, for the tax paid during the preceding calendar year, at a rate equal to ~~fourteen cents (14¢) per gallon plus the average of the two wholesale cents-per-gallon rates of tax in effect during the year for which refund is claimed,~~ the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less one cent (1¢) per gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105-440."

Sec. 5.3. G.S. 105-446.1 reads as rewritten:

"§ *105-446.1. ~~Refunds of taxes paid by counties and municipalities.~~ Refund of tax paid on motor fuel by certain governmental entities and nonprofit organizations.*

~~The following entities shall be entitled to reimbursement for the tax levied by G.S. 105-434 upon filing a statement in writing with the Secretary of Revenue, which statement shall be made upon the oath or affirmation of the chief executive officer of said entity, showing the number of gallons of fuel purchased and used by said entity on which the tax levied by G.S. 105-434 has been paid: the Board of Transportation, counties, municipal corporations, volunteer fire departments, county fire departments, volunteer rescue squads, and "sheltered workshop" organizations recognized and approved by the Department of Human Resources. "Chief executive officer" shall mean the Director of Highways, the mayor, city manager or other municipal officer designated by the governing body of the municipality, the chairman of the board of county commissioners or other county officer designated by the board of county commissioners, or the president or other duly designated officer or agent of a volunteer fire department, county fire department, volunteer rescue squad or "sheltered workshop" organization. Reimbursement shall be at a rate equal to fourteen cents (14¢) per gallon plus the wholesale cents-per-gallon rate of tax in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. An application for a refund under this section shall be made in accordance with G.S. 105-440.~~

(a) A governmental entity or a nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the tax paid during the preceding quarter, at a rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. The following entities may receive a refund under this section:

(1) The Department of Transportation;
(2) A county or a municipal corporation;
(3) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government;
(4) A volunteer fire department;
(5) A volunteer rescue squad;
(6) A sheltered workshop recognized by the Department of Human Resources.

(b) An application for a refund allowed under this section must be made in accordance with G.S. 105-440 and must be signed by the chief executive officer of the entity. The chief executive officer of the Department of Transportation is the Secretary of Transportation. The chief executive officer of a county or municipal corporation is the officer designated by the governing body of the county or municipal corporation, such as the chair of a board of county commissioners or the mayor of a city. The chief executive officer of a nonprofit organization is the president of the organization or another officer of the organization designated in the charter or by-laws of the organization."

Sec. 5.4. G.S. 105-446.3 reads as rewritten:

"§ *105-446.3. ~~Refund of taxes paid on motor fuels used in operation of motor buses transporting fare-paying passengers in a city transit system, in operation of a taxicab transporting fare-paying passengers, and in operation of private nonprofit transportation services.~~ Refund of tax paid on motor fuel used to operate a taxicab or transit system bus.*

~~(a) Any person, association, firm or corporation, who shall purchase any motor fuels, as defined in this Article, for the purpose of use, and the same is actually used, in the operation of motor buses transporting fare-paying passengers, in connection with a city transit system or in the operation of a taxicab transporting fare-paying passengers, both as hereinafter defined in subsection (b) of this section, or in the operation, by private nonprofit organizations, of motor vehicles transporting passengers under contract with or at the express designation of units of local government (such transportation above and hereinafter referred to as private nonprofit transportation services) shall be entitled to reimbursement for the tax levied by this Article upon filing with the Secretary of Revenue an application upon the oath or affirmation of the applicant or his agent showing the number of gallons of motor fuel so purchased and used. Reimbursement shall be at a rate equal to fourteen cents (14¢) per gallon plus the wholesale cents-per-gallon rate of tax in effect during the quarter for which the refund is claimed, less one cent (1¢) per~~

~~gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105-440.~~

~~(b) For the purposes of this section the term "city transit system" means a system of mass public transportation authorized to operate within any municipality or within contiguous municipalities and within a zone adjacent to and commercially a part of such municipality or contiguous municipalities as defined by the North Carolina Utilities Commission under the provisions of G.S. 62-260. Any person, association, firm or corporation, who, in addition to the operation of a city transit system as herein defined, holds a certificate from the North Carolina Utilities Commission for operations outside of the municipal limits and adjacent commercial zones or who conducts exempt operations outside of the municipal limits or adjacent commercial zones shall be entitled to the refund provided by this section only on taxes levied upon motor fuels actually used in the operation of the city transit system. For the purposes of this section the term "taxicab" shall mean a taxicab as defined in G.S. 20-87(1); provided, however, that a city transit system as defined herein shall not include limousine operations.~~

A person who purchases and uses motor fuel in a taxicab, as defined in G.S. 20-87(1), while the taxicab is engaged in transporting passengers for hire, or in a bus operated as part of a city transit system that is exempt from regulation by the North Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund, for the tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. An application for a refund must be made in accordance with G.S. 105-440."

Sec. 5.5. G.S. 105-446.5 reads as rewritten:

"*§ 105-446.5. Refund of taxes paid on motor fuel used by concrete mixing vehicles, solid waste compacting vehicles, and certain agricultural vehicles.*

~~(a) Refund.~~

A person who purchases and uses motor fuel in one of the vehicles listed below may receive a refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle;
(2) A solid waste compacting vehicle;
(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power take-off to unload the feed; and
(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power take-off to unload the lime or fertilizer.

The refund rate shall be computed by subtracting one cent (1¢) from ~~fourteen cents (14¢) per gallon plus the average of the two wholesale cents-per-gallon rates of tax in effect during the year for which the refund is claimed,~~ the combined amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, and multiplying the difference by thirty-three and one-third percent (33 1/3%). An application for a refund allowed under this section shall be made in accordance with G.S. 105-440. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle."

Sec. 5.6. G.S. 105-446.6 reads as rewritten:

"§ *105-446.6. Refund on taxpaid motor fuel transported to another state.*

Upon application to the Secretary, any person~~, association or corporation~~ who purchases motor fuel upon which the tax imposed by this Article has been paid, and who transports the fuel to another state for sale or use in that state, may be reimbursed at a rate equal to ~~fourteen cents (14¢) per gallon plus the wholesale cents-per-gallon rate of~~ the rate of tax paid on the fuel, less one cent (1¢) per gallon. The refund application shall require the claimant to furnish evidence satisfactory to the Secretary that the motor fuel for which the refund is claimed has been reported for taxation in the state to which it was transported. As used in this section, to 'transport' means to carry motor fuel in a cargo tank, tank car, barge or barrel and does not include carrying fuel in a tank connected with or attached to the engine of a motor vehicle."

Sec. 5.7. G.S. 105-449.39 reads as rewritten:

"§ *105-449.39. Credit for payment of motor fuel tax.*

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid by the carrier on fuel purchased in the State. ~~The credit shall be allowed at a rate equal to fourteen cents (14¢) per gallon plus the wholesale~~ at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. ~~Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Secretary shall be furnished by each such carrier claiming the credit herein allowed. When the amount of the credit herein provided to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, such excess may under regulations of the Secretary be allowed as a credit on the tax for which such carrier would be~~

~~otherwise liable for another quarter or quarters; or upon application within 180 days from the end of any quarter, duly verified and presented, in accordance with regulations promulgated by the Secretary and supported by such evidence as may be satisfactory to the Secretary, such excess may be refunded to said motor carrier.~~

~~Unless the Secretary of Revenue exercises his discretion as hereinafter provided, or as provided in G.S. 105-449.40, he shall allow such refund only after an audit of the applicant's records. However, he may, in his sole discretion, make refunds without prior audit or without having been furnished a bond pursuant to G.S. 105-449.40 if the motor carrier has complied with the provisions of this Subchapter and rules and regulations promulgated thereunder for a period of one full prior registration year.~~ To obtain this credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the motor carrier's liability for that quarter, the excess may, in accordance with rules adopted by the Secretary, be refunded to the motor carrier or carried forward and applied to the motor carrier's tax liability for another quarter. The Secretary may not allow a refund without auditing the motor carrier's records unless the motor carrier:

(1) Has furnished a bond under G.S. 105-449.40; or

(2) Has complied with this Subchapter and the rules adopted under the Subchapter for at least a one-year period preceding the date the application for a refund is filed."

Sec. 5.8. August 1, 1989, Inventory of Motor Fuel. Every distributor of motor fuel, both at wholesale and at retail, must inventory all motor fuel on hand or in his possession as of 12:01 a.m., August 1, 1989, and, on or before September 1, 1989, must report to the Secretary of Revenue the amount of the motor fuel. When filing the report, the distributor must remit to the Secretary of Revenue an additional tax on the motor fuel of three cents (3¢) per gallon plus an amount equal to the increase in the tax based on the increase in the variable cents-per-gallon tax effective August 1, 1989. The report required must be in a form prescribed by the Secretary.

Sec. 5.9. August 1, 1989, Inventory of Special Fuel. Every supplier or reseller of special fuel must inventory all special fuel on hand or in his possession as of 12:01 a.m., August 1, 1989, and, on or before September 1, 1989, must report to the Secretary of Revenue the amount of the special fuel. When filing the report, the supplier or reseller must remit to the Secretary of Revenue an additional tax on the special fuel of three cents (3¢) per gallon plus an amount equal to the increase in the tax based on the increase in the variable cents-per-

gallon tax effective August 1, 1989. The report required must be in a form prescribed by the Secretary.

Sec. 5.10. Motor Carrier Refund and Report. Notwithstanding G.S. 105-449.39 to the contrary, a motor carrier that as of 12:01 a.m. on August 1, 1989, has on hand or in its possession motor fuel or special fuel upon which it has paid the tax in effect on July 31, 1989, is allowed a credit of only the amount of tax paid on the fuel when filing the report required by G.S. 105-449.45. Notwithstanding G.S. 105-449.45, a motor carrier must file a report in accordance with that section for the period July 1, 1989, through July 31, 1989, and for the period August 1, 1989, through September 30, 1989.

Sec. 5.11. Annual Refund Rate. Notwithstanding G.S. 105-446, 105-446.5, and 105-449.24 to the contrary, the annual refund rate for tax paid on motor fuel or special fuel for calendar year 1989 is at a rate equal to the weighted average of the two flat cents-per-gallon rates plus the weighted average of the two variable cents-per-gallon rates in effect during that year, less one cent (1¢) per gallon.

Sec. 5.12. Quarterly Refund Rate. Notwithstanding G.S. 105-446.1, 105-446.3, and 105-449.24 to the contrary, the entities eligible under those statutes for a refund of tax paid on motor fuel or special fuel are entitled to a refund at the rate of fourteen and seven-tenths cents (14.7¢) per gallon for tax paid or accrued on fuel purchased before August 1, 1989, but used on or after August 1, 1989.

Sec. 5.13. Notwithstanding G.S. 105-449.39, as amended by this Part, until January 1, 1990, an application for a refund of a credit under that statute must be made within 180 days of the end of the quarter for which the refund is due.

Sec. 5.14. Section 2 of Chapter 7 of the 1989 Session Laws is repealed.

PART VI.

REPEAL ROAD TAX REGISTRATION FEE.

Sec. 6.1. G.S. 20-88.01 reads as rewritten:

"*§ 20-88.01. ~~Registration of certain vehicles for road tax~~ Revocation of registration for failure to register for or comply with road tax.*

~~Owners of passenger vehicles with seating capacity for more than 20 passengers, road tractors, tractor trucks, or trucks with more than two axles shall, in addition to all other registration fees imposed by this Article, pay a registration fee of ten dollars ($10.00) to register for purposes of the road tax imposed by Article 36B of Chapter 105. This fee shall be paid to the Commissioner at the same time as the fees imposed by G.S. 20-87 or G.S. 20-88 are paid. All vehicles licensed for more than 32,000 pounds are presumed to have more~~

~~than two axles. When registering a vehicle under this section, the owner of a vehicle that is leased to another shall report the name of the lessee to the Commissioner.~~

~~The Commissioner shall report all vehicles registered under this section to the Secretary of Revenue. No registration plate or registration renewal sticker shall be issued for a motor vehicle required to be registered under this section if the owner or lessee of that vehicle is not in compliance with Articles 36A or 36B of Chapter 105. The registration plate or registration renewal sticker issued for a motor vehicle under G.S. 20-87 or 20-88 signifies registration in accordance with this section. The Commissioner may revoke the registration plate for a motor vehicle registered under this section whenever the owner or lessee of the vehicle fails to comply with Articles 36A or 36B of Chapter 105.~~

~~This section does not apply to vehicles owned by the United States, the State or its political subdivisions, special mobile equipment as defined in G.S. 20-4.01(44), and vehicles owned by nonprofit religious, educational, charitable, or benevolent organizations.~~ The Secretary of Revenue may notify the Commissioner of those motor vehicles that are registered or are required to be registered under Article 36B of Chapter 105 and as appropriate, whose owners or lessees are not in compliance with Article 36A or 36B of Chapter 105. When notified, the Commissioner shall withhold or revoke the registration plate for the vehicle."

Sec. 6.2. G.S. 105-449.47 reads as rewritten:

"§ *105-449.47. Registration of vehicles.*

A motor carrier may not operate or cause to be operated in this State any vehicle listed in the definition of motor carrier unless the motor carrier has registered the vehicle for purposes of the tax imposed by this Article with the ~~Commissioner of Motor Vehicles or the Secretary, as appropriate~~ Secretary. ~~All vehicles required to be registered under this section that are registered in this State under G.S. 20-87 or G.S. 20-88 shall be registered with the Commissioner of Motor Vehicles pursuant to G.S. 20-88.01 for the purposes of the tax imposed by this Article. All other vehicles required to be registered under this section shall be registered with the Secretary.~~

Upon application ~~and payment of a fee of ten dollars ($10.00)~~, the Secretary shall issue a registration card and identification marker for a vehicle. The registration card shall be carried in the vehicle for which it was issued when the vehicle is in this State. The identification marker shall be clearly displayed at all times and shall be affixed to the vehicle for which it was issued in the place and manner designated by the Secretary. Every identification marker issued shall bear a number that corresponds to the number on the registration card issued

for the same vehicle. Registration cards and identification markers required by this section shall be issued on a calendar year basis. The Secretary may renew registration cards and identification markers without issuing new cards and markers. All identification markers issued by the Secretary remain the property of the State. The Secretary may withhold or revoke a registration card and identification marker when a motor carrier fails to comply with this Article or Article 36A of this Subchapter."

Sec. 6.3. Section 2 of Chapter 667 of the 1989 Session Laws is repealed.

PART VII.

ESTIMATED INCOME TAX AMENDMENTS.

Sec. 7.1. G.S. 105-163.15 reads as rewritten:

"*§ 105-163.15. Failure by individual to pay estimated income tax; penalty.*

(a) In the case of any underpayment of the estimated tax by an individual, there shall be added to the tax imposed under Article 4 for the taxable year an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment.

(b) For purposes of subsection (a), the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier: (i) the fifteenth day of the fourth month following the close of the taxable year, or (ii) with respect to any portion of the underpayment, the date on which such portion is paid. A payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) For purposes of this section there shall be four required installments for each taxable year with the time for payment of the installments as follows:

(1) First installment -- April 15 of taxable year;
(2) Second installment -- June 15 of taxable year;
(3) Third installment -- September 15 of taxable year; and
(4) Fourth installment -- January 15 of following taxable year.

(d) Except as provided in subsection ~~(c)~~ (e), the amount of any required installment shall be twenty-five percent (25%) of the required annual payment. The term 'required annual payment' means the lesser of:

(1) ~~Eighty percent (80%)~~ Ninety percent (90%) of the tax shown on the return for the taxable year, or, if no return is

filed, ~~eighty percent (80%)~~ ninety percent (90%) of the tax for that year; or

(2) One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

(e) In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under subsection (d), the amount of the required installment shall be the annualized income installment, and any reduction in a required installment resulting from the application of this subsection shall be recaptured by increasing the amount of the next required installment determined under subsection (d) by the amount of the reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured.

In the case of any required installment, the annualized income installment is the excess, if any, of (i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income for months in the taxable year ending before the due date for the installment, over (ii) the aggregate amount of any prior required installments for the taxable year. The taxable income shall be placed on an annualized basis under rules prescribed by the Secretary. The applicable percentages for the required installments are as follows:

(1) First installment -- ~~twenty percent (20%);~~ twenty-two and one-half percent (22.5%);

(2) Second installment -- ~~forty percent (40%);~~ forty-five percent (45%);

(3) Third installment -- ~~sixty percent (60%);~~ sixty-seven and one-half percent (67.5%); and

(4) Fourth installment -- ~~eighty percent (80%).~~ ninety percent (90%).

(f) No addition to the tax shall be imposed under subsection (a) if the tax shown on the return for the taxable year reduced by the tax withheld under Article 4A is less than forty dollars ($40.00) or if the individual did not have any liability for tax under Division II of Article 4 for the preceding taxable year.

(g) For purposes of this section, the term 'tax' means the tax imposed by Division II of Article 4 minus the credits against the tax allowed by Article 4. The amount of the credit allowed under Article 4A for withheld income tax for the taxable year is considered a payment of estimated tax, and an equal part of that amount is considered to have been paid on each due date of the taxable year.

unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld are considered payments of estimated tax on the dates on which such amounts were actually withheld.

(h) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no addition to tax shall be imposed under subsection (a) with respect to any underpayment of the fourth required installment for the taxable year.

(i) Notwithstanding the other provisions of this section, an individual who is a farmer or fisherman for a taxable year is required to make only one installment payment of tax for that year. This installment is due on or before January 15 of the following taxable year but may be paid without penalty or interest on or before March 1 of that year. The amount of the installment payment shall be the lesser of:

(1) Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66 2/3%) of the tax for that year; or

(2) One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

An individual is a farmer or fisherman for any taxable year if the individual's gross income from farming or fishing, including oyster farming, for the taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources for the taxable year, or the individual's gross income from farming or fishing, including oyster farming, shown on the return of the individual for the preceding taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources shown on the return.

(j) In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months that correspond thereto. This section shall be applied to taxable years of less than 12 months in accordance with rules prescribed by the Secretary.

(k) This section shall not apply to any estate or trust."

PART VIII.

EFFECTIVE DATES AND SUNSET.

Sec. 8.1. The prohibition imposed by G.S. 136-44.7(b) against changing the order of unpaved roads set out in a published list of the top 10 roads to be paved in a county applies to lists adopted for fiscal years beginning with the 1988-89 fiscal year.

Sec. 8.2. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 8.3. Section 3.1 of Part III shall become effective August 1, 1989. The remaining sections in Part III shall become effective October 1, 1989. Part IV of this act shall become effective October 1, 1989, except for Section 4.2, which shall become effective July 1, 1993. Part VI of this act shall become effective January 1, 1990. Part VII of this act is effective for taxable years beginning on and after January 1, 1990. The remaining Parts of this act shall become effective August 1, 1989. Sections 3.3 through 3.6 and Part IV shall apply to sales of motor vehicles made on or after October 1, 1989, except sales of motor vehicles made on or after that date pursuant to a written contract of sale entered into before that date, and shall apply to leases and rental agreements entered or renewed on or after that date.

Sec. 8.4. When contracts for all projects specified in Article 14 of Chapter 136 of the General Statutes have been let and sufficient revenue has been accumulated to pay the contracts, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State. The changes below shall become effective on the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between the date the letter is sent and the first day of the following quarter. In that circumstance, the changes shall become effective on the first day of the second calendar quarter following the date the Secretary sends the letter.

(1) Article 14 of Chapter 136 of the General Statutes is repealed.

(2) Article 12E of Chapter 120 of the General Statutes is repealed.

(3) G.S. 105-445 reads as rewritten:

"§ *105-445. Application of proceeds of gasoline tax.*

~~Seventy-five percent (75%) of the~~ The revenue collected under this Article shall be credited to the Highway ~~Fund~~ Fund. ~~and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the Highway Fund and the Highway Trust Fund so that seventy-five percent (75%) of the amount of a refund is charged to the Highway Fund and twenty-five percent (25%) is charged to the Highway Trust Fund.~~"

(4) G.S. 105-449.16(b) reads as rewritten:

"(b) The ~~same percentage amounts of~~ revenue collected under this Article shall be credited to the Highway ~~Fund~~ Fund. ~~and to the Highway Trust Fund as are credited to those Funds under G.S. 105-445, and the same percentage amounts of refunds allowed under this Article shall be charged to the Highway Fund and to the Highway Trust Fund as are charged to those Funds under that statute.~~"

(5) G.S. 105-449.43 reads as rewritten:

"§ 105-449.43. Application of tax proceeds.

The ~~same percentage amounts of~~ revenue collected under this Article shall be credited to the Highway ~~Fund~~ Fund. ~~and to the Highway Trust Fund as are credited to those Funds under G.S. 105-445, and the same percentage amounts of refunds allowed under this Article shall be charged to the Highway Fund and to the Highway Trust Fund as are charged to those Funds under that statute.~~"

(6) G.S. 20-85 reads as rewritten:

"§ 20-85. Schedule of fees.

~~(a)~~ Except as provided in G.S. 20-68, the following fees concerning a certificate of title for a motor vehicle and registration of a motor vehicle shall be paid to the Division. ~~These fees are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.~~

(1)	Each application for certificate of title	~~$35.00~~ $10.00
(2)	Each application for duplicate or corrected certificate of title	10.00
(3)	Each application of repossessor for certificate of title	10.00
(4)	Each transfer of registration	10.00
(5)	Each set of replacement registration plates	10.00
(6)	Each application for duplicate registration certificate	10.00
(7)	Each application for recording supplementary lien	10.00
(8)	Each application for removing a lien from a certificate of title	10.00.

~~(b) Six-sevenths of the revenue collected under subdivision (a)(1) of this section and all of the revenue collected under the other subdivisions in subsection (a) shall be credited to the North Carolina Highway Trust Fund; the remaining one-seventh of the revenue collected under subdivision (a)(1) shall be credited to the Highway Fund. One-half of the amount credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary~~

~~roads under G.S. 136-176 and used in accordance with G.S. 136-44.5.~~"

(7) G.S. 20-85.1(b) reads as rewritten:

"(b) The Commissioner and the employees of the Division designated by the Commissioner may prepare and deliver upon request a certificate of title, charging a fee of ~~fifty dollars ($50.00)~~ twenty-five dollars ($25.00) for one-day title service, in lieu of the title fee required by G.S. ~~20-85(a)~~ 20-85. The fee for one-day title service must be paid by cash or by certified check."

(8) G.S. 105-164.4(a)(1a) reads as rewritten:

"(1a) At the rate of two percent (2%) of the sales price of each manufactured home or motor vehicle sold at retail, including all accessories attached to the manufactured home or motor vehicle when it is delivered to the purchaser, not to exceed three hundred dollars ($300.00). Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article."

(9) G.S. 105-164.13(32) reads as rewritten:

"(32) ~~Sales of motor vehicles, the~~ The separate sales of a motor vehicle body and a motor vehicle chassis when the body is to be mounted on the chassis, and the sale of a body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis."

(10) Article 5A of Chapter 105 of the General Statutes is repealed.

(11) The first sentence of G.S. 105-434(a) reads as rewritten: "An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at a flat rate of ~~seventeen cents (17¢)~~ fourteen cents (14¢) per gallon, plus a variable rate of ~~either three and one-half cents (3 1/2¢) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater,~~ three percent of the average wholesale price of motor fuel for the applicable base period."

In the General Assembly read three times and ratified this the 27th day of July, 1989.

S.B. 545 **CHAPTER 693**

AN ACT TO AMEND THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 118-41.1 reads as rewritten:

"§ *118-41.1. Additional retroactive membership.*

(a) Any fireman or rescue squad worker who is now eligible and is a member of a fire department or rescue squad chartered by the State of North Carolina and who has not previously elected to become a member may make application through the board of trustees for membership in the fund on or before March 31, 1987. The person shall make a lump sum payment of five dollars ($5.00) per month retroactively to the time he first became eligible to become a member, plus interest at an annual rate of eight percent (8%), for each year of his retroactive payments. Upon making the lump sum payment, the person shall be given credit for all prior service in the same manner as if he had made application for membership at the time he first became eligible. Any member who made application for membership subsequent to the time he was first eligible and did not receive credit for prior service may receive credit for this prior service upon lump sum payment of five dollars ($5.00) per month retroactively to the time he first became eligible, plus interest at an annual rate of eight percent (8%), for each year of his retroactive payments. Upon making this lump sum payment, the date of membership shall be the same as if he had made application for membership at the time he was first eligible. Any fireman or rescue squad worker who has applied for prior service under this subsection shall have until October 1, 1989, to pay for this prior service and, if this payment is not made by October 1, 1989, he shall not receive credit for this service.

(b) Effective April 1, 1987, any fireman or rescue squad worker who has not reached his thirty-fifth birthday who is eligible and who has not previously elected to become a member may make application through the board of trustees for membership in the fund at any time. The person shall make a lump sum payment of five dollars ($5.00) per month retroactively to the time he first became eligible to become a member, plus interest at an annual rate to be set by the board of trustees, for each year of his retroactive payments. Upon making this lump sum payment, the person shall be given credit for all prior service in the same manner as if he had made application for membership at the time he first became eligible. Any member who has not reached his thirty-fifth birthday who made application for membership subsequent to the time he was first eligible and did not receive credit for prior service may receive credit for such prior service upon lump sum payment of five dollars ($5.00) per month retroactively to the time he first became eligible, plus interest at an annual rate to be set by the board of trustees, for each year of his retroactive payments. Upon making this lump sum payment, the date of membership shall be the same as if he had made application for membership at the time he was first eligible. Any fireman or rescue squad worker who applies for prior service under this subsection shall

have six months from the date of his application to pay for this prior service and if the payment is not made within that time he shall not receive credit for the prior service."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1989.

S.B. 961 **CHAPTER 694**

AN ACT TO PROVIDE THAT THE DISTRIBUTION OF COCAINE RESULTING IN DEATH IS PUNISHABLE AS SECOND-DEGREE MURDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-17 reads as rewritten:

"*§ 14-17. Murder in the first and second degree defined; punishment.*

A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of ~~opium~~ opium, or cocaine or other substance described in G.S. 90-90(a)4., when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class C felon."

Sec. 2. This act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1989.

H.B. 70 **CHAPTER 695**

AN ACT TO REQUIRE THAT THE DIVISION OF AGING PROVIDE FOR THE COORDINATION OF EXISTING DATA REGARDING THE ELDERLY AND TO REQUIRE THAT ALL STATE AGENCIES AND ENTITIES POSSESSING SUCH DATA COOPERATE WITH THE DIVISION.

The General Assembly of North Carolina enacts:

Section 1. The Division of Aging, Department of Human Resources, shall maintain an inventory of existing data sets regarding the elderly in North Carolina, in order to ensure that adequate demographic, geographic, health, social, economic, and other pertinent indicators are available to generate its regularly updated Plan for Serving Older Adults.

Upon request, the Division shall make information on these data sets available within a reasonable time.

All State agencies and entities that possess data relating to the elderly, including the Department of Human Resources' Division of Health Services, the Division of Facility Services, and the Division of Social Services, and the Department of Administration, shall cooperate, upon request, with the Division of Aging in implementing this act.

No additional appropriations are required by this act.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1989.

H.B. 74 **CHAPTER 696**

AN ACT TO REQUIRE THE DIVISION OF AGING TO BE THE INFORMATION CLEARINGHOUSE REGARDING EDUCATION AND TRAINING PROGRAMS ABOUT AND FOR THE ELDERLY IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The Division of Aging, Department of Human Resources, shall be the central clearinghouse for information regarding all State education and training programs available and being provided about and for the elderly in North Carolina.

Sec. 2. The Division of Aging, Department of Human Resources, shall produce and distribute annually an updated calendar of conferences, training events, and educational programs about and for the elderly in North Carolina.

Sec. 3. All State agencies and entities administering State or federal funding for education and training programs about and for the elderly shall provide to the Division of Aging by September 1 of each year all information required by the Division regarding conferences, training events, and educational programs provided about and for the elderly.

No additional appropriations are required by this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1989.

H.B. 824 **CHAPTER 697**

AN ACT TO EXPAND THE MEMBERSHIP OF THE NASH COUNTY ECONOMIC DEVELOPMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 158-8 reads as rewritten:

"*§ 158-8. Creation of municipal, county or regional commissions authorized; composition; joining or withdrawing from regional commissions.*

The governing body of any municipality or the board of county commissioners of any county may by resolution create an economic development commission for said municipality or county. The governing bodies of any two or more municipalities and/or counties may by joint resolution, adopted by separate vote of each governing body concerned, create a regional economic development commission. A municipal or county economic development commission shall consist of from ~~three to nine members,~~ 10 to 30 members, named for terms and compensation (if any) fixed by its respective governing body. The membership, compensation (if any), and terms of a regional economic development commission, and the formula for its financial support, shall be fixed by the joint resolution creating the commission. Additional governmental units may join a regional commission with the consent of all existing members. Any governmental unit may withdraw from a regional commission on two years' notice to the other members. The resolution creating a municipal, county, or regional economic development commission may be modified, amended, or repealed in the same manner as it was originally adopted."

Sec. 2. This act is effective upon ratification and applies to Nash County only.

In the General Assembly read three times and ratified this the 28th day of July, 1989.

S.B. 282 **CHAPTER 698**

AN ACT TO AMEND THE COMMUNICABLE DISEASE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-148 reads as rewritten:

"§ *130A-148. Laboratory tests for AIDS virus infection.*

(a) For the protection of the public health, the Commission shall adopt rules establishing standards for the certification of laboratories to perform tests for Acquired Immune Deficiency Syndrome (AIDS) virus infection. The rules shall address, but not be limited to, proficiency testing, record maintenance, adequate staffing and confirmatory testing. Tests for AIDS virus infection shall be performed only by laboratories certified pursuant to this subsection and only on specimens submitted by a physician licensed to practice medicine. This subsection shall not apply to testing performed solely for research purposes under the approval of an institutional review board.

(b) Prior to obtaining consent for donation of blood, semen, tissue or organs, a facility or institution seeking to obtain blood, tissue, semen or organs for transfusion, implantation, transplantation or administration shall provide the potential donor with information about AIDS virus transmission, and information about who should not donate.

(c) No blood or semen may be transfused or administered when blood from the donor has not been tested or has tested positive for AIDS virus infection by a standard laboratory test.

(d) No tissue or organs may be transplanted or implanted when blood from the donor has not been tested or has tested positive for AIDS virus infection by a standard laboratory test unless consent is obtained from the recipient, or from the recipient's guardian or a responsible adult relative of the recipient if the recipient is not competent to give such consent.

(e) Any facility or institution that obtains or transfuses, implants, transplants, or administers blood, tissue, semen, or organs shall be immune from civil or criminal liability that otherwise might be incurred or imposed for transmission of AIDS virus infection if the provisions specified in subsections (b), (c), and (d) of this section have been complied with.

(f) Specimens may be tested for AIDS virus infection for research or epidemiologic purposes without consent of the person from whom the specimen is obtained if all personal identifying information is removed from the specimen prior to testing.

(g) Persons tested for AIDS virus infection shall be notified of test results and counseled appropriately. This subsection shall not apply to tests performed by or for entities governed by Article 34 of G.S. Chapter 58, the Insurance Information and Privacy Protection Act, provided that said entities comply with the notice requirements thereof.

(h) The Commission may authorize or require laboratory tests for AIDS virus infection when necessary to protect the public health.

A test for AIDS virus infection may also be performed upon any person solely by order of a physician licensed to practice medicine in North Carolina who is rendering medical services to that person when, in the reasonable medical judgment of the physician, the test is necessary for the appropriate treatment of the person; however, the person shall be informed that a test for AIDS virus infection is to be conducted, and shall be given clear opportunity to refuse to submit to the test prior to it being conducted, and further if informed consent is not obtained, the test may not be performed. A physician may order a test for AIDS virus infection without the informed consent of the person tested if the person is incapable of providing or incompetent to provide such consent, others authorized to give consent for the person are not available, and testing is necessary for appropriate diagnosis or care of the person.

An unemancipated minor may be tested for AIDS virus infection without the consent of the parent or legal guardian of the minor when the parent or guardian has refused to consent to such testing and there is reasonable suspicion that the minor has AIDS virus or HIV infection or that the child has been sexually abused.

(i) Except as provided in this section, no test for AIDS virus infection shall be required, performed or used to determine suitability for continued employment, housing or public services, or for the use of places of public accommodation as defined in G.S. 168A-3(8), or public transportation.

Further it shall be unlawful to discriminate against any person having AIDS virus or HIV infection on account of that infection in determining suitability for continued employment, housing, or public services, or for the use of places of public accommodation, as defined in G.S. 168A-3(8), or public transportation.

Any person aggrieved by an act or discriminatory practice prohibited by this subsection relating to housing shall be entitled to institute a civil action pursuant to G.S. 41A-7 of the State Fair Housing Act. Any person aggrieved by an act or discriminatory practice prohibited by this subsection other than one relating to housing may bring a civil action to enforce rights granted or protected by this subsection.

The action shall be commenced in superior court in the county where the alleged discriminatory practice or prohibited conduct occurred or where the plaintiff or defendant resides. Such action shall be tried to the court without a jury. Any relief granted by the court shall be limited to declaratory and injunctive relief, including orders to hire or reinstate an aggrieved person or admit such person to a labor organization.

In a civil action brought to enforce provisions of this subsection relating to employment, the court may award back pay. Any such back pay liability shall not accrue from a date more than two years prior to the filing of an action under this subsection. Interim earnings or amounts earnable with reasonable diligence by the aggrieved person shall operate to reduce the back pay otherwise allowable. In any civil action brought under this subsection, the court, in its discretion, may award reasonable attorney's fees to the substantially prevailing party as a part of costs.

A civil action brought pursuant to this subsection shall be commenced within 180 days after the date on which the aggrieved person became aware or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct.

Nothing in this section shall be construed so as to prohibit an employer from:

(1) Requiring a test for AIDS virus infection for job applicants in preemployment medical examinations required by the employer;

(2) Denying employment to a job applicant based solely on a confirmed positive test for AIDS virus infection;

(3) Including a test for AIDS virus infection performed in the course of an annual medical examination routinely required of all employees by the employer; or

(4) Taking the appropriate employment action, including reassignment or termination of employment, if the continuation by the employee who has AIDS virus or HIV infection of his work tasks would pose a significant risk to the health of the employee, coworkers, or the public, or if the employee is unable to perform the normally assigned duties of the job.

(j) It shall not be unlawful for a licensed health care provider or facility to:

(1) Treat a person who has AIDS virus or HIV infection differently from persons who do not have that infection when such treatment is appropriate to protect the health care provider or employees of the provider or employees of the

facility while providing appropriate care for the person who has the AIDS virus or HIV infection; or

(2) Refer a person who has AIDS virus or HIV infection to another licensed health care provider or facility when such referral is for the purpose of providing more appropriate treatment for the person with AIDS virus or HIV infection."

Sec. 2. Restaurants issued a permit pursuant to G.S. 130A-248 shall be exempted from G.S. 130A-148(i), as it applies to suitability for continued employment, until July 1, 1991.

Sec. 3. G.S. 130A-135 reads as rewritten:

"§ *130A-135. Physicians to report.*

A physician licensed to practice medicine who has reason to suspect that a person about whom the physician has been consulted professionally has a communicable disease or communicable condition declared by the Commission to be reported, shall report information required by the Commission to the local health director of the county or district in which the physician is consulted. The Commission shall declare confirmed HIV infection to be a reportable communicable condition."

Sec. 4. A new section is added to Chapter 130A of the General Statutes to read:

"§ *130A-395. Handling and transportation of bodies.*

(a) It shall be the duty of the physician licensed to practice medicine under Chapter 90 attending any person who dies and is known to have smallpox, plague, HIV infection, hepatitis B infection, rabies, or Jakob-Creutzfeldt to provide written notification to all individuals handling the body of the proper precautions to prevent infection. This written notification shall be provided to funeral service personnel at the time the body is removed from any hospital, nursing home, or other health care facility. When the patient dies in a location other than a health care facility, the attending physician shall notify the funeral service personnel verbally of the precautions required in subsections (b) and (c) as soon as the physician becomes aware of the death.

(b) The body of a person who died from smallpox or plague shall not be embalmed. The body shall be enclosed in a strong, tightly sealed outer case which will prevent leakage or escape of odors as soon as possible after death and before the body is removed from the hospital room, home, building, or other premises where the death occurred. This case shall not be reopened except with the consent of the local health director.

(c) Persons handling bodies of persons who died and were known to have HIV infection, hepatitis B infection, Jakob-Creutzfeldt, or

rabies shall be provided written notification to observe blood and body fluid precautions."

Sec. 5. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 31st day of July, 1989.

S.B. 1227 **CHAPTER 699**

AN ACT TO PROVIDE PROCEDURES FOR SETTING OFF AGAINST A DEBTOR'S STATE TAX REFUND AMOUNTS OWED BECAUSE THE DEBTOR FRAUDULENTLY OBTAINED PUBLIC ASSISTANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105A-2(1) reads as rewritten:

"(1) 'Claimant agency' means and includes:

a. The State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes;

b. The North Carolina Department of Human Resources when in the exercise of its authority to collect health profession student loans made pursuant to G.S. 131-121;

c. The North Carolina Department of Human Resources when in the performance of its duties under the Medical Assistance Program enabled by Chapter 108A, Article 2, Part 6, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Medical Assistance Program collection functions;

d. The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support arrearages owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties.

e. The University of North Carolina, including its constituent institutions as specified by G.S. 116-2(4);

f. The North Carolina Memorial Hospital in the conduct of its financial affairs and operations pursuant to G.S. 116-37;

g. The Board of Governors of the University of North Carolina and the State Board of Education through the College Scholarship Loan Committee when in the performance of its duties of administering the Scholarship Loan Fund for Prospective College Teachers enabled by Chapter 116, Article 5;
h. The Office of the North Carolina Attorney General on behalf of any State agency when the claim has been reduced to a judgment;
i. The State Board of Community Colleges through community colleges as enabled by Chapter 115D in the conduct of their financial affairs and operations;
j. State facilities as listed in G.S. 122C-181(a), School for the Deaf at Morganton, North Carolina Sanatorium at McCain, Western Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill under Chapter 143, Article 7; Governor Morehead School under Chapter 115, Article 40; Central North Carolina School for the Deaf under Chapter 115, Article 41; Wright School for Treatment and Education of Emotionally Disturbed Children under Chapter ~~122, Article 12A;~~ 122C; and these same institutions by any other names by which they may be known in the future;
k. The North Carolina Department of Revenue;
l. The Administrative Office of the Courts;
m. The Division of Forest Resources of the Department of Natural Resources and Community Development;
n. The Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan, established in Article 3 of General Statutes Chapter 135;
o. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the Scholarship Loan Fund for Prospective Teachers enabled by Chapter 115C, Article 32A and the scholarship loan and grant programs enabled by Chapter 115C, Article 24C, Part 1.
p. The Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System in the performance of their duties pursuant to Chapters 120, 128, 135 and 143 of the General Statutes.

q. The North Carolina Teaching Fellows Commission in the performance of its duties pursuant to Chapter 115C, Article 24C, Part 2.

r. The North Carolina Department of Human Resources when in the performance of its intentional program violation collection duties under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Food Stamp Program intentional program violation collection functions.

The North Carolina Department of Human Resources when, in the performance of its duties under the Aid to Families with Dependent Children Program or the Aid to Families with Dependent Children - Emergency Assistance Program provided in Part 2 of Article 2 of Chapter 108A or under the State-County Special Assistance for Adults Program provided in Part 3 of Article 2 of Chapter 108A, it seeks to collect public assistance payments obtained through an intentional false statement, intentional misrepresentation, or intentional failure to disclose a material fact."

Sec. 2. This act shall become effective January 1, 1990.

In the General Assembly read three times and ratified this the 31st day of July, 1989.

S.B. 11334 **CHAPTER 700**

AN ACT TO DELAY PART II OF THE HIGHWAY TRUST FUND ACT TO ALLOW ADDITIONAL TIME FOR ADMINISTRATIVE PREPARATION.

The General Assembly of North Carolina enacts:

Section 1. Section 8.3 of Chapter 692, Session Laws of 1989 is amended by adding a new sentence at the beginning of the section to read: "Part II of this act shall become effective August 15, 1989."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of July, 1989.

H.B. 655 **CHAPTER 701**

AN ACT TO REPEAL FINANCIAL RESPONSIBILITY OF SPOUSE FOR LONG TERM CARE PATIENT STATUTES FOR THE MEDICAID PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-61 is repealed.

Sec. 2. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 31st day of July, 1989.

H.B. 656 **CHAPTER 702**

AN ACT TO REPEAL THE STATUTES REGARDING MEDICAID INCREASED PER DIEM RATES FOR CERTAIN HOSPITALS SERVING INDIGENT PATIENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-66 is repealed.

Sec. 2. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 31st day of July, 1989.

H.B. 892 **CHAPTER 703**

AN ACT TO PROVIDE FOR AN ELECTION IN A PART OF CURRITUCK COUNTY ON THE QUESTION OF ESTABLISHING A COINJOCK CANALS AREA BEAUTIFICATION DISTRICT AND TO PROVIDE FOR THE LEVY AND COLLECTION OF PROPERTY TAXES IN THIS DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. Election Authorized. The Board of County Commissioners of Currituck County may call an election in the Coinjock Canals Area District, described in Section 2 of this act, to submit to the voters in the district the single issue of establishing the Coinjock Canals Area Beautification District and authorizing the annual levy and collection of a special ad valorem tax on all taxable property in the district to beautify the district and protect the citizens of the district by providing for the installation of underground utility lines. The Currituck County Board of Elections shall conduct this election, in accordance with Chapter 163 of the General Statutes, and

shall certify the results of the election to the Currituck County Board of Commissioners.

Sec. 2. Description of District. The Coinjock Canals Area Beautification District consists of that part of Currituck County including the Moyock, Poplar Branch, Church's Island, Powell's Point, Knotts Island, and Whalehead voting precincts.

Sec. 3. Ballot. The Currituck County Board of Elections shall prepare ballots in the following form for an election called under Section 1 of this act:

"[ ] FOR creation of the Coinjock Canals Area Beautification District and the levy of an ad valorem tax, not to exceed ten cents (10¢) for each one hundred dollars ($100.00) taxable valuation, to beautify the district and protect the citizens of the district by providing for the underground installation of utility lines.

[ ] AGAINST creation of the Coinjock Canals Area Beautification District and the levy of an ad valorem tax, not to exceed ten cents (10¢) for each one hundred dollars ($100.00) taxable valuation, to beautify the district and protect the citizens of the district by providing for the underground installation of utility lines."

Sec. 4. District Established; Tax Levy. If a majority of the qualified voters voting in an election called under Section 1 of this act vote in favor of creating the Coinjock Canals Area Beautification District and authorizing the levy and collection of an ad valorem tax in the district, the Currituck County Board of Commissioners shall, upon receipt of a certified copy of the election results, adopt a resolution creating the Coinjock Canals Area Beautification District and shall file a copy of the resolution with the clerk of superior court of Currituck County. Upon establishing the Coinjock Canals Area Beautification District, the Currituck County Board of Commissioners may annually levy an ad valorem tax on all taxable property in the district in an amount the board considers necessary to provide for the installation of underground utility lines, not to exceed ten cents (10¢) for each one hundred dollars ($100.00) taxable valuation of property. The proceeds of this tax shall be used only to provide for the underground installation of utility lines in the district.

Sec. 5. Nature of District; Governing Body. If created, the Coinjock Canals Area Beautification District shall be a body politic and corporate and shall have the power to provide for the installation of underground utility lines and do all acts reasonably necessary to fulfill this purpose. The Currituck County Board of Commissioners shall serve, ex officio, as the governing body of the district, and the officers of the board of county commissioners shall likewise serve as

the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 31st day of July, 1989.

H.B. 945 **CHAPTER 704**

AN ACT TO EXEMPT VENTURE CAPITAL COMPANIES FROM INTANGIBLES TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-212 reads as rewritten:

"§ *105-212. ~~Institution~~ Institutions exempted; conditional and other exemptions.*

(a) None of the taxes levied in this Article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds, evidences of debt, or securities held irrevocably in a charitable remainder trust meeting the requirements of section 664 of the Code or in a pooled income fund meeting the requirements of section 642(c)(5) of the Code, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor to any funds, evidences of debt, or securities held irrevocably in pension, profit-sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the provisions of G.S. 105-161(f)(1)a; nor to any funds, evidences of debt or securities held irrevocably in a pension, profit-sharing, stock bonus or annuity plan established by an employer for the benefit of his employees or for himself and his employees if such plan qualifies for exemption from income tax under the provisions of G.S. 105-141(b)(19); nor to any funds, evidences of debt, or securities held in an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code, if such individual retirement account or individual retirement annuity is

exempt from income tax under the provisions of G.S. 105-161(f)(1)c or 105-141(b)(19).

(b) Insurance companies reporting premiums to the Commissioner of Insurance of this State and paying a tax thereon under the provisions of Article ~~8B.~~ 8B, Schedule I-B shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203, building and loan associations and savings and loan associations paying a tax under the provisions of Article 8D of Chapter 105 of the General Statutes shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203; State credit unions organized pursuant to the provisions of Subchapter III, Chapter 54, paying the supervisory fees required by law, shall not be subject to any of the taxes levied in this Article or schedule; banks, banking associations and trust companies shall not be subject to the tax levied in this Article or schedule on evidences of debt held by them when said evidences of debt represent investment of funds on deposit with such banks, banking associations and trust companies: Provided, that each such institution must, upon request by the Secretary of Revenue, establish in writing its claim for exemption as herein provided. The exemption in this ~~section~~ subsection shall apply only to those institutions, and only to the extent, specifically mentioned, and no other.

(c) Any corporation or trust doing business in North Carolina which in the opinion of the Secretary of Revenue of North Carolina qualifies as a 'regulated investment company' under section 851 of the Code or as a 'real estate investment trust' under the provisions of section 856 of the Code and which files with the North Carolina Department of Revenue its election to be treated as a 'regulated investment company' or 'real estate investment trust,' shall not be subject to any of the taxes levied in this Article or schedule.

(d) The taxes levied in this Article do not apply to evidences of debt or equity securities held by a venture capital firm. For the purpose of this subsection, the term 'venture capital firm' means a person, corporation, partnership, limited partnership, or other entity that:

(1) Does not own the securities of any business for the purpose of operating the business or for any purpose other than as an investment for future sale;

(2) Is not organized to invest in only one business or one group of businesses that conduct the same or a similar type of business activity;

(3) Is organized for the principal purpose of investing in, and does in fact have more than fifty percent (50%) of all its investments in the equity securities or subordinated debt of companies that, at the time of the investment:

a. Had no more than 100 owners of their securities, excluding officers, directors, partners, and employees;
b. Were not financial institutions; and,
c. Did not derive their income or value primarily from real estate; and

(4) Has the remainder of its investments in shares of stock or other investments on which either no tax is imposed or is payable under this Article.

A venture capital firm may rely on the written representations of a company as to the number of owners of its securities. The definitions as found in G.S. 105-163.010 apply to this subsection.

(e) If any intangible personal property held or controlled by a fiduciary domiciled in this State is so held or controlled for the benefit of a nonresident or nonresidents, or for the benefit of any organization exempt under this section for the tax imposed by this Article, such intangible personal property shall be partially or wholly exempt from taxation and under the provisions of this Article in the ratio which the net income distributed or distributable to such nonresident, nonresidents or organization, derived from such intangible personal property during the calendar year for which the taxes levied by this Article are imposed, bears to the entire net income derived from such intangible personal property during such calendar year. 'Net income' shall be deemed to have the same meaning that it has in the income tax article. Where the intangible personal property for which this exemption is claimed is held or controlled with other property as a unit, allocation of appropriate deductions from gross income shall be made to that part of the entire gross income which is derived from the intangible personal property by direct method to the extent practicable; and otherwise by such other method as the Secretary of Revenue shall find to be reasonable: Provided, that each fiduciary claiming the exemption provided in this paragraph shall, upon the request of the Secretary of Revenue, establish in writing its claim to such exemption. No provisions of law shall be construed as exempting trust funds or trust property from the taxes levied by this Article except in the specific cases covered by this ~~section.~~ subsection.

(f) As used in this section, the term 'Code' means the Internal Revenue Code as enacted as of January 1, 1988, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 2. This act is effective for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 31st day of July, 1989.

H.B. 1775 **CHAPTER 705**

AN ACT TO INCREASE THE MAXIMUM PROPERTY TAX EXCLUSION FOR RESIDENCES OF DISABLED VETERANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-275(21) reads as rewritten:

"(21) The first ~~thirty-four~~ thirty-eight thousand dollars ~~($34,000)~~ ($38,000) in assessed value of housing together with the necessary land therefor, owned and used as a residence by a disabled veteran who receives benefits under Title 38, section 801, United States Code Annotated. This exclusion shall be the total amount of the exclusion applicable to such property."

Sec. 2. This act is effective for taxable years beginning on or after January 1, 1990.

In the General Assembly read three times and ratified this the 31st day of July, 1989.

S.B. 139 **CHAPTER 706**

AN ACT TO REGULATE HISTORIC DISTRICTS AND LANDMARKS.

The General Assembly of North Carolina enacts:

Section 1. Part 3A and Part 3B of Article 19 of Chapter 160A of the General Statutes are repealed.

Sec. 2. Article 19 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 3C. Historic Districts and Landmarks

"*§ 160A-400.1. Legislative findings.*

The historical heritage of our State is one of our most valued and important assets. The conservation and preservation of historic districts and landmarks stabilize and increase property values in their areas and strengthen the overall economy of the State. This Part authorizes cities and counties of the State within their respective zoning jurisdictions and by means of listing, regulation, and acquisition:

(1) To safeguard the heritage of the city or county by preserving any district or landmark therein that embodies important elements of its culture, history, architectural history, or prehistory; and

(2) To promote the use and conservation of such district or landmark for the education, pleasure and enrichment of the residents of the city or county and the State as a whole.

"§ 160A-400.2. *Exercise of powers by counties as well as cities.*

The term 'municipality' or 'municipal' as used in G.S. 160A-400.1 through 160A-400.15 shall be deemed to include the governing board or legislative board of a county, to the end that counties may exercise the same powers as cities with respect to the establishment of historic districts and designation of landmarks.

"§ 160A-400.3. *Character of historic district defined.*

Historic districts established pursuant to this Part shall consist of areas which are deemed to be of special significance in terms of their history, prehistory, architecture, and/or culture, and to possess integrity of design, setting, materials, feeling, and association.

"§ 160A-400.4. *Designation of historic districts.*

Any municipal governing board may, as part of a zoning or other ordinance enacted or amended pursuant to this Article, designate and from time to time amend one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use district classification or as districts which overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning ordinance may include as uses by right or as conditional uses those uses found by the Preservation Commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration or preservation of the district.

No historic district or districts shall be designated until:

(1) An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and

(2) The Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the municipal governing board within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the municipality of any responsibility for awaiting such analysis, and said board may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

The municipal governing board may also, in its discretion, refer the report and proposed boundaries to any local preservation commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subdivision (1) of this section shall be prepared by the preservation commission, and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision (2) of this section.

On receipt of these reports and recommendations, the municipality may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

"*§ 160A-400.5. Designation of landmarks; adoption of an ordinance; criteria for designation.*

Upon complying with G.S. 160A-400.6, the governing board may adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. No property shall be recommended for designation as a historic landmark unless it is deemed and found by the preservation commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated, and any other information the governing board deems necessary. For each building, structure, site, area, or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in this Part be observed prior to its demolition. For each designated landmark, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way.

"*§ 160A-400.6. Required landmark designation procedures.*

As a guide for the identification and evaluation of landmarks, the commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties

of historical, architectural, prehistorical, and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the Division of Archives and History. No ordinance designating a historic building, structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by a preservation commission or the governing board of a municipality, until all of the following procedural steps have been taken:

(1) The preservation commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines, not inconsistent with this Part, for altering, restoring, moving, or demolishing properties designated as landmarks.

(2) The preservation commission shall make or cause to be made an investigation and report on the historic, architectural, prehistorical, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.

(3) The Department of Cultural Resources, acting through the State Historic Preservation Officer shall either upon request of the department or at the initiative of the preservation commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this Part. Any comments shall be provided in writing. If the Department does not submit its comments or recommendation in connection with any designation within 30 days following receipt by the Department of the investigation and report of the commission, the commission and any city or county governing board shall be relieved of any responsibility to consider such comments.

(4) The preservation commission and the governing board shall hold a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33C.

(5) Following the joint public hearing or separate public hearings, the governing board may adopt the ordinance as

proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

(6) Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and all amendments thereto shall be filed by the preservation commission in the office of the register of deeds of the county in which the landmark or landmarks are located. Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the preservation commission shall pay a reasonable fee for filing and indexing. In the case of any landmark property lying within the zoning jurisdiction of a city, a second copy of the ordinance and all amendments thereto shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the city or county building inspector. The fact that a building, structure, site, area or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(7) Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the preservation commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.

"§ *160A-400.7. Historic Preservation Commission.*

Before it may designate one or more landmarks or historic districts, a municipality shall establish or designate a historic preservation commission. The municipal governing board shall determine the number of the members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. All the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360. The commission may appoint advisory bodies and committees as appropriate.

In lieu of establishing a historic preservation commission, a municipality may designate as its historic preservation commission, (i) a separate historic districts commission or a separate historic landmarks commission established pursuant to this Part to deal only with historic districts or landmarks respectively, (ii) a planning agency established pursuant to this Article, or (iii) a community appearance commission established pursuant to Part 7 of this Article. In order for a commission or board other than the preservation commission to be designated, at least three of its members shall have demonstrated special interest, experience, or education in history, architecture, or related fields. At the discretion of the municipality the ordinance may also provide that the preservation commission may exercise within a historic district any or all of the powers of a planning agency or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint preservation commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint preservation commission.

"§ *160A-400.8. Powers of the Historic Preservation Commission.*

A preservation commission established pursuant to this Part may, within the zoning jurisdiction of the municipality:

(1) Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;

(2) Recommend to the municipal governing board areas to be designated by ordinance as 'Historic Districts'; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as 'Landmarks';

(3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;

(4) Restore, preserve and operate historic properties;

(5) Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;

(6) Conduct an educational program with respect to historic properties and districts within its jurisdiction;

(7) Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission when authorized by the governing board may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law;

(8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;

(9) Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan;

(10) Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part; and

(11) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

"§ *160A-400.9. Certificate of appropriateness required.*

(a) From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission. The municipality shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Part. A certificate of appropriateness shall be required whether or not a building or other permit is required.

For purposes of this Part, 'exterior features' shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and

the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, 'exterior features' shall be construed to mean the style, material, size, and location of all such signs. Such 'exterior features' may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area.

Except as provided in (b) below, the commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district which would be incongruous with the special character of the landmark or district.

(b) Notwithstanding subsection (a) of this section, jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

(c) Prior to any action to enforce a landmark or historic district ordinance, the commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines not inconsistent with this Part for new construction, alterations, additions, moving and demolition. The ordinance may provide, subject to prior adoption by the preservation commission of detailed standards, for the review and approval by an administrative official of applications for a certificate of appropriateness or of minor works as defined by ordinance; provided, however, that no application for a certificate of appropriateness may be denied without formal action by the preservation commission.

Prior to issuance or denial of a certificate of appropriateness the commission shall take such steps as may be reasonably required in the ordinance and/or rules of procedure to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. All meetings of the commission

shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33C.

(d) All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed, as defined by the ordinance or the commission's rules of procedure. As part of its review procedure, the commission may view the premises and seek the advice of the Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

(e) An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii) shall be taken within times prescribed by the preservation commission by general rule, and (iii) shall be in the nature of *certiorari*. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.

(f) All of the provisions of this Part are hereby made applicable to construction, alteration, moving and demolition by the State of North Carolina, its political subdivisions, agencies and instrumentalities, provided however they shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of a local preservation commission. The commission shall render its decision within 30 days from the date that the notice of appeal by the State is received by it. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the State for certificates of appropriateness. The decision of the commission shall be final and binding upon both the State and the preservation commission.

"*§ 160A-400.10. Conflict with other laws.*

Whenever any ordinance adopted pursuant to this Part requires a longer waiting period or imposes other higher standards with respect to a designated historic landmark or district than are established under any other statute, charter provision, or regulation, this Part shall govern. Whenever the provisions of any other statute, charter provision, ordinance or regulation require a longer waiting period or impose other higher standards than are established under this Part, such other statute, charter provision, ordinance or regulation shall govern.

"*§ 160A-400.11. Remedies.*

In case any building, structure, site, area or object designated as a historic landmark or located within a historic district designated pursuant to this Part is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the ordinance or other provisions of this Part, the city or county, the historic preservation commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area or object. Such remedies shall be in addition to any others authorized by this Chapter for violation of a municipal ordinance.

"*§ 160A-400.12. Appropriations.*

A city or county governing board is authorized to make appropriations to a historic preservation commission established pursuant to this Part in any amount that it may determine necessary for the expenses of the operation of the commission, and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation, and management of historic buildings, structures, sites, areas or objects designated as historic landmarks or within designated historic districts, or of land on which such buildings or structures are located, or to which they may be removed.

"*§ 160A-400.13. Certain changes not prohibited.*

Nothing in this Part shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, material or appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing in this Part shall be construed to prevent a property owner from making any use of his property that is not prohibited by other law. Nothing in this Part shall be construed to prevent a) the maintenance, or b) in the event of an emergency the immediate restoration, of any existing above-ground utility structure without approval by the preservation commission.

"*§ 160A-400.14. Delay in demolition of landmarks and buildings within historic district.*

(a) An application for a certificate of appropriateness authorizing the demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in subsection (c). However, the effective date of such a

certificate may be delayed for a period of up to 180 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the preservation commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the preservation commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal.

If the commission or planning agency has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the local governing board, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission or planning agency for a period of up to 180 days or until the local governing board takes final action on the designation, whichever occurs first.

(b) The governing board of any municipality may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

(c) An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial."

Sec. 2.1. Section 9-11 of the Charter of the Town of Carrboro, being Chapter 476, Session Laws of 1987, is amended by adding the following before the period at the end: ", or (iv) a historic preservation commission, established pursuant to G.S. 160A-400.7".

Sec. 2.2. Section 9-13(8) of the Charter of the Town of Carrboro, being Chapter 476, Session Laws of 1987, is amended by deleting "G.S. 160A-397", and substituting "G.S. 160A-400.9".

Sec. 3. G.S. 40A-3(b) reads as rewritten:

"(b) Local Public Condemnors. -- For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by other statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter."

Sec. 3.1. G.S. 105-278 is amended by deleting "designated as a historic structure or site by a local ordinance adopted pursuant to G.S. 160A-399.4" and substituting "designated as a historic structure or site by a local ordinance adopted pursuant to G.S. 160A-399.4 or

designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160A-400.5".

Sec. 3.2. Nothing contained in this act shall be applicable to any proceeding to obtain a certificate of appropriateness begun prior to the effective date of this act, nor shall any provision of this act nor any ordinance enacted pursuant to this act be applicable to any certificate of appropriateness issued prior to the effective date of this act regardless of the effective date of the certificate of appropriateness. Any proceeding to obtain a certificate of appropriateness begun prior to the effective date of this act or any certificate of appropriateness issued prior to the effective date of this act shall be governed by the provisions of Parts 3A and 3B of Article 19 of Chapter 160A of the General Statutes, including any local modifications of those Parts, and the ordinances adopted thereunder.

Sec. 4. Nothing in Sections 1 or 2 of this act shall affect the validity of any historic district commission or historic district established prior to the effective date of this act pursuant to Part 3A of Article 19 of Chapter 160A of the General Statutes, nor of any historic properties commission or historic properties established prior to the effective date of this act pursuant to Part 3B of Article 19 of Chapter 160A of the General Statutes.

Sec. 5. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 1st day of August, 1989.

H.B. 425 **CHAPTER 707**

AN ACT TO MAKE CONFORMING AMENDMENTS TO THE EMPLOYMENT SECURITY LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-4(t) is amended by adding a subsection to read:

"(7a) Nothing in this subsection (t) shall be construed to prevent the Commission from disclosing, upon request and on a reimbursable basis only, to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency as defined in Section 303(i)(4) of the Social Security Act, any information from the records of the Employment Security Commission with respect to individuals applying for or participating in any housing assistance program administered by the Department of Housing and Urban Development who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development. It is the purpose of this paragraph to assure the Employment Security

Commission's compliance with Section 303(i)(1) of the Social Security Act and it shall be construed accordingly."

Sec. 2. G.S. 96-4(t) is amended by adding a subsection to read:

"(7b) Nothing in this subsection (t) shall be construed to prevent the Commission from disclosing, upon request and on a reimbursable basis, to the Secretary of Health and Human Services, any information from the records of the Employment Security Commission as may be required by Section 303(h)(1) of the Social Security Act. It is the purpose of this paragraph to assure compliance with Section 303(h)(1) of the Social Security Act and it shall be construed accordingly."

Sec. 3. G.S. 96-13(f) reads as rewritten:

"(f) (1) Benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law or was lawfully present for purposes of performing such services (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203 (a)(7) or section 212 (d)(5) of the Immigration and Nationality Act). Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence.

(2) An individual who is not a citizen or national of the United States shall not be deemed available for work under subsection (a)(3) of this section unless the individual is in satisfactory immigration status under the laws administered by the United States Department of Justice, Immigration and Nationalization Service."

Sec. 4. G.S. 96-15 is amended by adding a new subsection to read:

"(c2) Whenever a party is notified of an Adjudicator's, Appeals Referee's, or Deputy Commissioner's decision by mail, G.S. 1A-1, Rule 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal."

Sec. 5. G.S. 96-14(2) reads as rewritten:

"(2) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to

which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he was discharged for misconduct connected with his work. Misconduct connected with the work is defined as conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

'Discharge for misconduct with the work' as used in this section is defined to include but not be limited to separation initiated by an employer for reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of August, 1989.

H.B. 960 **CHAPTER 708**

AN ACT TO AMEND THE LAW CONCERNING PURCHASE MONEY SECURITY INTERESTS FOR CITIES, COUNTIES, AND WATER AND SEWER AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20 reads as rewritten:

"§ *160A-20. ~~Purchase money security~~ Security interests.*

(a) Cities, counties, and water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes may purchase or finance the purchase of real or personal property by installment contracts ~~which~~ that create in the property purchased a security interest to secure payment of the purchase ~~money.~~ price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) Cities, counties, and water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes may finance the construction or repair of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some

portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for such construction or repair.

(c) Cities, counties, and water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of such advance funding are invested pending disbursement.

(d) No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any fixture, improvement, project, or property financed or purchased pursuant to such contract.

(e) A contract entered into under this section is subject to ~~the applicable provisions of~~ approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:

(1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and

(2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(f) No deficiency judgment may be rendered against any city, county, or water and sewer authority created under Article 1 of Chapter 162A of the General Statutes in any action for breach of a contractual obligation authorized by this section, and the taxing power of a city or county is not and may not be pledged directly or indirectly to secure any moneys due ~~to the seller.~~ under a contract authorized by this section. ~~Any contract made or entered into by a city or county before June 1, 1979, which would have been valid hereunder is hereby validated, ratified and confirmed.~~

(g) Before entering into a contract under this section involving real property, a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing."

Sec. 2. (a) Any contract made or entered into, prior to the date of ratification of this act, by a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General

Statutes which would have been valid under G.S. 160A-20, subsections (a), (b), (c), and (f), as rewritten by this act, is hereby validated, ratified, and confirmed. Furthermore, such a contract may not be held invalid because it contains a nonsubstitution clause, or because no public hearing was advertised and held on the contract, or both.

(b) Any contract made or entered into, prior to the date of ratification of this act, by a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes which would have been valid under subsection (a) of this Section 2 or under G.S. 160A-20 as it existed prior to the ratification of this act or as rewritten by this act, except that the Local Government Commission did not approve the contract, is hereby validated, ratified, and confirmed.

Sec. 3. Nothing in this act shall be interpreted to limit or restrict the authority of cities, counties, or water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes to purchase, improve, or finance the purchase or improvement of real or personal property pursuant to any other applicable law, whether general, special, or local.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of August, 1989.

H.B. 983 **CHAPTER 709**

AN ACT TO CLARIFY THE REQUIREMENTS FOR LICENSURE AND CERTIFICATION OF ELECTRICAL CONTRACTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-39 reads as rewritten:

"*§ 87-39. Board of Examiners; appointment; terms; chairman; meetings; quorum; principal office; compensation; oath.*

The State Board of Examiners of Electrical Contractors shall continue as the State agency responsible for the licensing of persons engaging in electrical contracting within this State, and shall consist of one member from the North Carolina Department of Insurance to be designated by the Commissioner of Insurance; one member who has satisfied the requirements for an unlimited license as defined in G.S. 87-43.3 and who is a representative of the North Carolina Association of Electrical Contractors to be designated by the governing body of that organization; and five members to be appointed by the Governor: one from the faculty of The Greater University of North Carolina who teaches or does research in the field of electrical engineering, one who

is serving as a chief electrical inspector of a municipality or county in North Carolina, one who has satisfied the requirements for ~~a~~ an unlimited license ~~classified under~~ as defined in G.S. 87-43.3 and who ~~represents~~ is a representative of the Carolinas Electrical Contractors Association operating a sole proprietorship, partnership or corporation located in North Carolina which is actively engaged in the business of electrical contracting, and two who have no ties with the construction industry and who represent the interest of the public at large. ~~The Governor shall appoint the two public members as soon as practicable after July 1, 1979, for terms of seven years.~~ The terms of ~~the successors to~~ all members shall be seven years and until their successors are designated or appointed and are qualified. A vacancy occurring during a term shall be filled for the remainder of the unexpired term by the authority which designated or appointed the member to the seat being vacated. All members shall be citizens of North Carolina and reside in North Carolina during their tenure on the Board. No member ~~appointed after June 8, 1979,~~ shall serve ~~more than one~~ two complete consecutive ~~term.~~ terms.

The Board shall hold regular meetings quarterly and may hold meetings on call of the chairman. The chairman shall be required to call a special meeting upon written request by two members of the Board. The Board shall, at the first meeting following appointment of the new member in each year, meet and elect from its membership a chairman and vice-chairman, each to serve for one year. Four members of the Board shall constitute a quorum. The principal office of the Board shall be at such place as shall be designated by a majority of the members thereof. Payment of compensation and reimbursement of expenses of Board members shall be governed by G.S. 93B-5. Before entering upon the performance of his duties hereunder, each member of the Board shall take and file with the Secretary of State an oath in writing to properly perform the duties of his office as a member of said Board, and to uphold the Constitution of North Carolina and the Constitution of the United States."

Sec. 2. Article 4 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"*§ 87-41.1. Definitions.*

As used in this Article, unless the context requires otherwise:

(1) A 'qualified individual' is an individual who is qualified in a specific license classification as a result of having taken and passed the qualifying examination required by this Article for such a classification and who has been certified as such by the Board pursuant to G.S. 87-42.

(2) A 'listed qualified individual' is a qualified individual whose name is listed on a license issued by the Board. A listed

qualified individual has the specific duty and authority to supervise and direct electrical contracting done by or in the name of a licensee of the Board on whose license the qualified individual is so listed.

(3) A licensee of the Board is a person listed pursuant to subsection (2), or a partnership, firm or corporation that regularly employs at least one listed qualified individual and which has been issued a license by the Board."

Sec. 3. G.S. 87-42 reads as rewritten:

"*§ 87-42. Duties and powers of Board.*

In order to protect the life, health and property of the public, the State Board of Examiners of Electrical Contractors shall provide for the written examination of all applicants for ~~a license as an electrical contractor.~~ certification as a qualified individual, as defined in G.S. 87-41.1. The Board shall receive all applications for certification as a qualified individual and all applications for licenses to be issued under this Article, shall examine all applicants to determine that each ~~shall be qualified~~ has met the requirements for certification and shall ~~also~~ discharge ~~those~~ all duties enumerated in ~~G.S. 87-47.~~ this Article. ~~Individual applicants~~ Applicants for certification as a qualified individual must be at least ~~21~~ 18 years of ~~age.~~ age and shall be required to demonstrate to the satisfaction of the Board ~~evidence of~~ their good character and adequate technical and practical knowledge concerning the safe and proper installation of electrical work and equipment. The examination to be given for this purpose shall include, but not be limited to, the appropriate provisions of the National Electrical Code ~~and~~ as incorporated in the North Carolina State Building Code, the analysis of electrical plans and specifications, estimating of electrical installations, and the fundamentals of the installation of electrical work and equipment. Certification of qualified individuals shall be issued in the same classifications as provided in this Article for license classifications. The Board shall prescribe the standards of knowledge, experience and proficiency to be required of ~~licensees,~~ qualified individuals, which may vary for the various ~~classifications of licenses.~~ license classifications. The Board shall issue certifications and licenses to all applicants meeting the requirements of this Article and of the Board upon the receipt of the fees prescribed by G.S. 87-44. The Board shall have power to make rules and regulations necessary to the performance of its duties and for the effective implementation of the provisions of this Article. ~~The Board shall issue licenses to all applicants meeting the requirements of the Board upon the receipt of the fees herein prescribed.~~ The Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before

the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the Chairman for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court. The Board shall keep minutes of all its ~~proceedings.~~ proceedings and shall keep an accurate record of receipts and disbursements which shall be audited at the close of each fiscal year by a certified public ~~accountant~~ accountant, and the audit report shall be filed with the State of North Carolina in accordance with Chapter 93B of the General Statutes."

Sec. 4. G.S. 87-43 reads as rewritten:

"*§ 87-43. Electrical contracting defined; licenses.*

Electrical contracting shall be defined as engaging or offering to engage in the business of installing, maintaining, altering or repairing any electric work, wiring, devices, appliances or equipment. No person, partnership, firm or corporation shall engage, or offer to engage, in the business of electrical contracting within the State of North Carolina without having received a license in the applicable classification described in G.S. 87-43.3 from the State Board of Examiners of Electrical Contractors in compliance with the provisions of this ~~Article.~~ Article, regardless of whether the offer was made or the work was performed by a qualified individual as defined in G.S. 87-41.1. In each separate place of business operated by an electrical contractor at least one ~~person~~ listed qualified individual ~~must~~ shall be regularly on active duty ~~who has passed the examination required by this Article~~ and ~~who has~~ shall have the specific duty and authority to supervise and direct all electrical wiring or electrical installation work done or made by such separate place of business. Every person, partnership, firm or corporation engaging in the business of electrical contracting shall display a current certificate of license in his principal place of business and in each branch place of business which he operates. Licenses issued hereunder shall be signed by the chairman and the secretary-treasurer of the Board, under the seal of the Board. A registry of all licenses issued to electrical contractors shall be kept by the secretary-treasurer of the Board, and said registry shall be open for public inspection during ordinary business hours."

Sec. 5. G.S. 87-43.2 reads as rewritten:

"*§ 87-43.2. ~~Corporate or partnership practice of electrical contracting.~~ Issuance of License.*

(a) A person, partnership, firm, or corporation ~~or partnership~~ shall be eligible to be licensed as an electrical ~~contractor.~~ contractor and to

have such license renewed, subject to the provisions of this Article, provided:

(1) At least one ~~person who has~~ listed qualified ~~under the provisions of this Article~~ individual shall be regularly employed by the applicant at each separate place of ~~business, such person~~ business to have the specific duty and authority to ~~provide direct supervision of all installation, maintenance, alteration or repair of any electrical wiring, devices, appliances or equipment~~ supervise and direct electrical contracting done by or in the name of the licensee;

(2) An application is filed with the Board which contains a statement of ownership, states the names and official positions of all employees ~~currently qualified under this Article,~~ who are listed qualified individuals and provides such other information as the Board may reasonably require;

(3) The applicant, through an authorized officer or owner, shall agree in writing ~~that the corporation or partnership will~~ to report to the Board within five days any additions to or loss of the employment of listed qualified ~~individuals as described in subdivisions (1) and (2) above;~~ individuals; and

(4) ~~A license issued to a corporation or partnership shall indicate the names and classifications of qualified individuals as described in subdivisions (1) and (2) above;~~ The applicant furnishes, upon the initial application for a license, a bonding ability statement completed by a bonding company licensed to do business in North Carolina, verifying the applicant's ability to furnish performance bonds for electrical contracting projects having a value in excess of seventeen thousand five hundred dollars ($17,500) for the intermediate license classification and in excess of seventy-five thousand dollars ($75,000) for the unlimited license classification. In lieu of furnishing the bonding ability statement, the applicant may submit for evaluation and specific approval of the Board other information certifying the adequacy of the applicant's financial ability to engage in projects of the license classification applied for. The bonding ability statement or other financial information must be submitted in the same name as the license to be issued. If the firm for which a license application is filed is owned by a sole proprietor, the bonding ability statement or other financial information may be furnished in either the firm name or the name of the proprietor. However, if the application is submitted in the name of a sole proprietor, the applicant shall submit

information verifying that the person in whose name the application is made is in fact the sole proprietor of the firm.

~~(5) A license issued to a corporation or partnership shall be canceled if at any time no person who has qualified under the provisions of this Article shall be regularly employed by the corporation or partnership as provided by subdivision (1) above; provided, that work begun prior to such cancellation may be completed under such conditions as the Board shall direct; provided further that no work for which a license is required under this Article shall be bid for, contracted for or initiated subsequent to such cancellation until said license is reinstated by the Board.~~

(b) A license shall indicate the names and classifications of all listed qualified individuals employed by the applicant. A license shall be cancelled if at any time no listed qualified individual is regularly employed by the applicant; provided, that work begun prior to such cancellation may be completed under such conditions as the Board shall direct; and provided further that no work for which a license is required under this Article may be bid for, contracted for or initiated subsequent to such cancellation until said license is reinstated by the Board."

Sec. 6. G.S. 87-43.3 reads as rewritten:

"§ *87-43.3. Classification of licenses.*

An electrical ~~contractor's~~ contracting license shall be issued in one of the following classifications: Limited, under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of ~~ten~~ seventeen thousand five hundred dollars ~~($10,000)~~ ($17,500) and on which the equipment or installation in the contract is rated at not more than 600 volts; Intermediate, under which a licensee shall be permitted to engage in a single electrical contracting project of a value not in excess of ~~fifty~~ seventy-five thousand dollars ~~($50,000);~~ ($75,000); Unlimited, under which a licensee shall be permitted to engage in any electrical contracting project regardless of value; and such other special Restricted ~~classification~~ classifications as the Board may establish from time to time to ~~provide~~ provide, (i) for the licensing of persons, partnerships, firms or corporations wishing to engage in special restricted electrical contracting, under which license a licensee shall be permitted to engage only in a specific phase of electrical contracting of a special, limited ~~nature;~~ nature, and (ii) for the licensing of persons, partnerships, firms or corporations wishing to engage in electrical contracting work as an incidental part of their primary business, which is a lawful business other than electrical contracting, under which license a licensee shall be permitted to engage only in a specific

phase of electrical contracting of a special, limited nature directly in connection with said primary business. The Board may establish appropriate standards for each classification, such standards not to be inconsistent with the provisions of G.S. 87-42."

Sec. 7. G.S. 87-44 reads as rewritten:

"*§ 87-44. Fees; license term.*

The Board shall collect a fee from each applicant before granting or renewing a license under the provisions of this Article; the annual license fee for the limited classification shall not be in excess of thirty dollars ($30.00) for each principal and each branch place of business; the annual license fee for the intermediate classification shall not be in excess of seventy-five dollars ($75.00) for each principal and each branch place of business; the annual license fee for the unlimited classification shall not be in excess of one hundred fifty dollars ($150.00) for each principal and each branch place of business; and the annual license fee for the special restricted classifications and for the single-family detached residential dwelling license shall not be in excess of thirty dollars ($30.00) for each principal and each branch place of business.

Each license issued under the provisions of this Article shall expire on June 30 following the date of its ~~issuance,~~ issuance and shall be renewed by the ~~Board upon~~ Board, subject to G.S. 87-44.1 and G.S. 87-47, after receipt and evaluation of a renewal application from a licensee and the payment of the required fee. The application shall be upon a form provided by the Board and shall ~~furnish~~ require such information as the Board may ~~require.~~ prescribe. Renewal applications and fees shall be due 30 days prior to the license expiration ~~date; applications received after this time may, in the discretion of the Board, be subject to a penalty not exceeding ten percent (10%) of the license fee. No license issued in accordance with the provisions of this Article shall be assignable or transferable.~~ date.

Upon failure to renew by June 30, the license shall be automatically revoked. This license may be reinstated by the Board, subject to G.S. 87-44.1 and G.S. 87-47, upon payment of the license fee, a late renewal fee not to exceed twenty-five dollars ($25.00), and all fees for the lapsed period during which the person, partnership, firm or corporation engaged in electrical contracting, and, further, upon the satisfaction of such experience requirements during the lapse as the Board may prescribe by rule.

The Board may collect fees from applicants for examinations in amounts not exceeding the maximum annual license fees for the respective license classifications prescribed in this Article, except the fee for a specially arranged examination shall not exceed two hundred dollars ($200.00). In addition, the Board may collect an examination

review fee, not to exceed ten dollars ($10.00), from failed examinees who apply for a supervised review of their failed examinations."

Sec. 8. Chapter 87 of the General Statutes is amended by adding a new section to read:

"*§ 87-44.1. Continuing Education Courses Required.*

Beginning July 1, 1991, the Board may require as prerequisite to the annual renewal of a license that every listed qualified individual complete continuing education courses in subjects relating to electrical contracting to assure the safe and proper installation of electrical work and equipment in order to protect the life, health, and property of the public. The listed qualified individual shall complete, during the 12 months immediately preceding license renewal, a specific number of hours of continuing education courses approved by the Board prior to enrollment. The Board shall not require more than 10 hours of continuing education courses per 12 months and such continuing education courses shall include those taught at a community college as approved by the Board. The listed qualified individual may accumulate and carry forward not more than two additional years of the annual continuing education requirement. Attendance at any course or courses of continuing education shall be certified to the Board on a form provided by the Board and shall be submitted at the time the licensee makes application to the Board for its license renewal and payment of its license renewal fee. This continuing education requirement may be waived by the Board in cases of certified illness or undue hardship as provided for in the Rules of the Board."

Sec. 9. G.S. 87-47 reads as rewritten:

"*§ 87-47. Jurisdiction of ~~Board over licensees.~~ Board.*

~~(a) In the interest of protecting the public, the Boardshall have jurisdiction to hear and determine on its own motion or upon written complaint, all complaints, allegations of charges of malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence or gross misconduct in the practice of electrical contracting, or fraud or deceit in obtaining a license under this Article, made against any licensee under this Article; and the Board may administer to licensees any one or more of the following penalties: (i) reprimand; (ii) suspension from practice for a period not to exceed twelve months; (iii) revocation of license; and (iv) probationary revocation of license upon conditions set by the Board as the case shall in their judgment warrant with revocation of license upon failure to comply.~~

~~The Board shall, in accordance with Chapter 150A of the General Statutes, formulate rules of procedure governing the hearings of charges against licensees. Any person may prefer charges against any licensee, and such charges must be sworn to by the complainant and submitted in writing to the Board. Charges shall be heard and~~

~~determined by the Board, and may be dismissed without notice to the accused licensee if unfounded or trivial. In conducting hearings of charges against licensees, the Board may remove the same to any county in which the offense, or any part thereof, was committed if in the opinion of the Board the ends of justice or the convenience of witnesses require such removal.~~

(a1) In the interest of protecting the public, whenever the Board finds that (i) an applicant for certification as a qualified individual, (ii) an applicant for a license, (iii) an applicant for a renewal of a license, (iv) a qualified individual, or (v) a person, partnership, firm or corporation to whom or to which a certification or license has been issued, is guilty of one or more of the following:

(1) Offering to engage or engaging in electrical contracting without being licensed;
(2) Selling, transferring, or assigning a license, regardless of whether for a fee;
(3) Aiding or abetting an unlicensed person, partnership, firm, or corporation to offer to engage or to engage in electrical contracting;
(4) A crime involving fraud or moral turpitude by conviction thereof;
(5) Fraud or misrepresentation in obtaining a certification, in obtaining or renewing a license, or in the practice of electrical contracting;
(6) False or misleading advertising; or
(7) Malpractice, unethical conduct, fraud, deceit, gross negligence, gross incompetence, or gross misconduct in the practice of electrical contracting;

the Board may refuse or revoke certification as a qualified individual, or may refuse to issue or renew a license.

(a2) In addition to the administrative action authorized by subdivision (a1) above, the Board may administer one or more of the following penalties if the applicant, licensee, or qualified individual is found to be guilty of one or more of the acts listed in subdivision (a1):

(1) Reprimand;
(2) Suspension from practice for a period not to exceed 12 months;
(3) Revocation of the right to serve as a listed qualified individual on any license issued by the Board;
(4) Revocation of license; and
(5) Probationary revocation of license or the right to serve as a listed qualified individual on any license issued by the Board, upon conditions set by the Board as the case shall

warrant, with revocation upon failure to comply with the conditions.

(a3) The Board shall, in accordance with Chapter 150B of the General Statutes, formulate rules of procedure governing the hearings of charges against applicants, qualified individuals and licensees. Any person may prefer charges against any applicant, qualified individual, or licensee, and such charges must be sworn to by the complainant and submitted in writing to the Board. In conducting hearings of charges, the Board may remove the hearings to any county in which the offense, or any part thereof, was committed if in the opinion of the Board the ends of justice or the convenience of witnesses require such removal.

(b) The Board shall adopt and publish rules, consistent with the provisions of this Article, governing the ~~suspension and revocation of licenses.~~ matters contained in this section.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each applicant, qualified individual and licensee. This record shall include, for each applicant, qualified individual and licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may ~~reissue a license to any person, firm or corporation~~ reinstate a qualified individual's certification and may reinstate a license after having revoked ~~such license, provided;~~ it, provided that one year has elapsed from revocation until ~~reissuance,~~ reinstatement and that the vote of the Board for reinstatement is by a majority of its members.

The Board shall immediately notify the Secretary of State and the electrical inspectors within the licensee's county of residence upon the revocation of a license or the reissuance of a license which had been revoked.

(e) In any case in which the Board is entitled to convene a hearing to consider a charge under this section, the Board may accept an offer in compromise of the charge, whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000). All such penalties collected by the Board shall be deposited in the General Fund of North Carolina."

Sec. 10. G.S. 87-48 reads as rewritten:

"*§ 87-48. Penalty for violation of Article; powers of Board to enjoin violation.*

(a) Any person, partnership, firm or corporation who shall violate any of the provisions of this ~~Article,~~ Article or any rule of the Board adopted pursuant to this Article or who shall engage or ~~undertake~~ offer to engage in the business of installing, maintaining, altering or

repairing within the State of North Carolina any electric wiring, devices, appliances or equipment without first having obtained a license under the provisions of this ~~Article.~~ Article shall be guilty of a misdemeanor and upon conviction thereof ~~shall~~ shall, for each offense, be subject to a fine of not ~~less~~ more than ~~twenty-five dollars ($25.00) or more than fifty dollars ($50.00) for each offense. Conviction of a violation of this Article on the part of a holder of a license issued hereunder shall automatically have the effect of suspending such license until such time as it shall have been reinstated by the State Board of Examiners of Electrical Contractors.~~ three hundred dollars ($300.00) or imprisonment for not more than three months or both.

(b) Whenever it shall appear to the State Board of Examiners of Electrical Contractors that any person, partnership, firm or corporation has violated, is violating, or threatens to ~~violate, or is violating~~ violate any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain such practices. If upon such application the court finds that any provision of this Article is being violated, or a violation thereof is threatened, the court shall issue an order restraining and enjoining such violations, and such relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this Article. The venue for actions brought under this subsection shall be the superior court of any county in which such acts are alleged to have been committed or in the county where the defendants in such action reside."

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of August, 1989.

H.B. 1123 **CHAPTER 710**

AN ACT TO STUDY THE PARTICIPATION IN THE FOOD STAMP PROGRAM IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The Department of Human Resources, Division of Social Services, shall undertake a study of the reasons for the declining participation in the Food Stamp Program in North Carolina since 1980. This study shall examine the trend and extent of North Carolina's food stamp participation rate among AFDC households compared to other states and the barriers, if any, which prevent certain groups of potential food stamp recipients such as children, the

elderly, disabled, or working or rural poor from participating in the program.

Sec. 2. The Department of Human Resources, in conjunction with other public and private agencies who work with low-income persons with hunger problems, shall develop recommendations to eliminate the barriers to food stamp participation identified in the study. The report's recommendations shall be accompanied by estimates of the costs and potential benefits of each recommendation and a plan for each recommendation's implementation. The Department shall submit its final report to the Social Services Study Commission, if that Commission is reauthorized, and to the General Assembly by April 1, 1990.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of August, 1989.

H.B. 1264 **CHAPTER 711**

AN ACT TO REDUCE THE PENALTY FOR FAILURE TO WEAR HELMETS ON MOTORCYCLES, TO MAKE FAILURE TO WEAR HELMETS ON MOPEDS AN INFRACTION, AND TO AMEND THE DRIVING WHILE IMPAIRED STATUTES RELATING TO THE DEFINITION OF VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-140.4 reads as rewritten:

"§ *20-140.4. Special provisions for motorcycles and mopeds.*

(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons which it was designed to carry.

(2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor Vehicles.

(b) Violation of any provision of this section shall not be considered negligence per se or contributory negligence per se in any civil action.

(c) Any person convicted of violating this section shall have committed an infraction and shall be fined according to G.S. 20-135.2A(e) and (f)."

Sec. 2. G.S. 20-138.1 is amended by adding a new subsection at the end to read:

"(e) Exception. -- Notwithstanding the definition of 'vehicle' pursuant to G.S. 20-4.01(49), for purposes of this section the word 'vehicle' does not include a horse, bicycle, or lawnmower."

Sec. 3. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 1st day of August, 1989.

S.B. 260 **CHAPTER 712**

AN ACT TO PROHIBIT SEXUAL HARASSMENT IN THE RENTAL OF RESIDENTIAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"*§ 14-395.1. Sexual harassment.*

(a) Offense. Any lessor of residential real property or the agent of any lessor of residential real property who shall harass on the basis of sex any lessee or prospective lessee of the property shall be guilty of a misdemeanor punishable by a term of imprisonment not to exceed six months, a fine not to exceed two hundred dollars ($200.00), or both.

(b) Definitions. For purposes of this section:

(1) 'Harass on the basis of sex' means unsolicited overt requests or demands for sexual acts when (i) submission to such conduct is made a term of the execution or continuation of the lease agreement, or (ii) submission to or rejection of such conduct by an individual is used to determine whether rights under the lease are accorded;

(2) 'Lessee' means a person who enters into a residential rental agreement with the lessor and all other persons residing in the lessee's rental unit; and

(3) 'Prospective lessee' means a person seeking to enter into a residential rental agreement with a lessor."

Sec. 2. This act shall become effective October 1, 1989, and shall apply to acts committed on or after that date.

In the General Assembly read three times and ratified this the 2nd day of August, 1989.

S.B. 1163 **CHAPTER 713**

AN ACT TO PROVIDE THAT A PAID PREPARER OF TAX RETURNS MAY NOT DESIGNATE ON A TAXPAYER'S RETURN WHETHER OR NOT TAX FUNDS SHALL BE PAID FOR THE USE OF POLITICAL PARTIES UNLESS THE

PREPARER OBTAINS THE CONSENT OF THE TAXPAYER OR THE TAXPAYER'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-159.1 reads as rewritten:

"*§ 105-159.1. Designation of tax by individual to political party.*

(a) Every individual whose income tax liability for the taxable year is one dollar ($1.00) or more may designate on his or her income tax return that one dollar ($1.00) of the amount of tax paid by him or her to the Department of Revenue shall thereafter be paid by the Secretary of Revenue, in the manner hereinafter prescribed, to the State Treasurer for the use of all political parties as defined herein upon a pro rata basis according to their respective party voter registrations according to the most recent certification of the State Board of Elections: Provided, however, that no political party with less than one percent (1%) of the total number of registered voters in the State shall receive any such funds, and the registration of such parties shall not be included in calculating the pro rata distribution. For purposes of this section, political party shall mean a political party which at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor, or for presidential electors, or a group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes of North Carolina.

(b) For each quarterly period beginning January 1, 1978, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period, the Secretary of Revenue shall remit all funds so designated above collected during the preceding quarter to the State Treasurer who shall thereafter deposit them in an interest-bearing account to be known as the North Carolina Election Campaign Fund. Any interest earned on funds so deposited shall be credited to the political party for which said funds were designated. A report to the State Treasurer, State Board of Elections and each State party chairman shall accompany each such remittance, and shall detail the amount of funds forwarded, the cumulative total of funds forwarded to date for the year, and an estimate of the probable total amount to be collected and forwarded for that calendar year.

(c) Repealed by Session Laws 1983, c. 481, effective January 1, 1983.

(d) The Secretary of Revenue shall amend the income tax return in order that all taxpayers desiring to make the political contributions authorized ~~herein shall~~ in this section may do so by designating same on the front face of the tax return. The line of authorization for ~~such~~

the designation shall be color contrasted with the color scheme of the remainder of the income tax return. ~~Such~~ The return, or accompanying explanatory instruction, shall readily indicate that any such designations neither increase nor decrease an individual's tax liability.

(e) A paid preparer of tax returns may not designate on a return that the taxpayer does or does not desire to make the political contribution authorized in this section unless the taxpayer or the taxpayer's spouse has consented to the designation."

Sec. 2. This act is effective for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 2nd day of August, 1989.

S.B. 1191 **CHAPTER 714**

AN ACT TO PROVIDE FEES TO BE CHARGED BY THE SECRETARY OF STATE UNDER THE REVISED BUSINESS CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-1-22, as enacted by Chapter 265 of the 1989 Session Laws, reads as rewritten:

"§ *55-1-22.* ~~*Reserved for future codification purposes.*~~ *Filing, service, and copying fees.*

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00

(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	25.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	5.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this act	10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on him under this act. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) Fifty cents ($ .50) a page for copying; and

(2) Five dollars ($5.00) for the certificate."

Sec. 2. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 2nd day of August, 1989.

S.B. 62 **CHAPTER 715**

AN ACT TO REQUIRE STATE PUBLICATIONS PROCEDURES MANUALS, ADMINISTRATIVE REVIEW PROCEDURES FOR PUBLICATIONS, AND TO REQUIRE REPORTS CONCERNING THE USE OF ACID-FREE PAPER IN STATE PUBLICATIONS AND CONCERNING AGENCY NONCOMPLIANCE.

Whereas, a large number of publications are produced by State agencies, universities, community colleges and licensing boards; and

Whereas, no consistent policy exists concerning the development of State publication procedures by State agencies, universities, community colleges, and licensing boards; and

Whereas, the existence of State publication procedures and administrative review procedures would serve to aid distribution, increase efficiency, and reduce the cost of State publications; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 13 of Chapter 143 of the General Statutes is amended by adding the following new sections to read:

"*§ 143-170.2. Publication procedure manuals.*

(a) The Department of Administration, in consultation with at least the State Librarian and the State Auditor, shall establish, distribute, and periodically revise guidelines to be used by all State agencies and community colleges in developing publication procedures manuals for public documents. The initial guidelines developed by the Department of Administration shall be released no later than December 1, 1989 and shall address at least the following elements of publication production for public documents:

(1) bibliographic style, substantially in accord with a recognized style manual approved by the State Librarian; provided, however, the Department shall not develop guidelines concerning the design, layout, size or appearance of publications except as otherwise permitted herein;

(2) procedures for the notification of the State Library for title changes in serial publications;

(3) pricing of documents for resale;

(4) use of publication services at State-operated printing facilities;

(5) purchase of commercial publication services; and

(6) the distribution of publications.

The Department of Administration shall submit the initial guidelines to State agencies for review and comment for a period of 60 days; provided, however, that submission to the University of North Carolina General Administration shall satisfy this requirement with respect to universities. The Department, in consultation with at least the State Librarian and the State Auditor, shall consider the comments of the State agencies before adopting final guidelines. The Department of Administration shall adopt and release the final guidelines no later than four months after the release of the initial guidelines.

(b) Upon the adoption and release of final guidelines by the Department of Administration, each State agency and community college shall within four months thereafter adopt a publication procedures manual for public documents consistent with the guidelines established pursuant to subsection (a) of this section and an administrative review and approval process to ensure appropriate review and approval of its public documents.

(c) Each State agency and community college shall submit to the Department of Administration for review and retention a copy of its publication procedures manual and its administrative review procedure for public documents, and any revisions thereto, within thirty (30) days of adoption. The Department shall retain a copy of each agency's submissions. The publication procedures manual, the administrative review procedure, and any revisions shall be implemented upon adoption.

(d) The Department of Administration may revise its final guidelines after July 1, 1990 in the same manner as provided in this section for the adoption of its initial and final guidelines, provided that the period of agency review and comment shall be thirty (30) days.

"*§ 143-170.3. Reports; Audits.*

(a) The Department of Administration shall report to the Joint Legislative Commission on Governmental Operations each State agency and community college that fails to timely adopt and submit to the Department the information required by G.S. 143-170.2. The initial report shall be made by January 1, 1991.

(b) Upon the determination of the State Auditor that a State agency or community college has failed to substantially comply with its publications procedure manual or its administrative review and approval process for public documents, the State Auditor shall report the noncompliance to the Joint Legislative Commission on Governmental Operations within 60 days if the General Assembly is not in session, and to the President Pro Tempore of the Senate, the Speaker of the House, and the Senate and House Appropriations Committee Chairmen within 30 days if the General Assembly is in session.

(c) The State Librarian and the University Librarian of the University of North Carolina at Chapel Hill shall identify the types of publications for which the use of acid-free paper is desirable and, with the assistance of the Department of Administration, shall study the availability of acid-free paper and the costs associated with purchasing and using acid-free paper. The State Librarian and the University Librarian of the University of North Carolina at Chapel Hill shall report to the Joint Legislative Commission on Governmental

Operations no later than November 1, 1990 the information required by this subsection.

"§ *143-170.4. Administrative Office of the Courts; publications procedures manual; reports.*

Not later than June 1, 1990, the Administrative Office of the Courts, after review of the Department of Administration's state publications procedures guidelines and after consultation with the State Librarian and State Auditor, shall adopt (i) a publications procedures manual for public documents, other than the official reports of the North Carolina Supreme Court and the North Carolina Court of Appeals and official forms published by the Administrative Office of the Courts pursuant to G.S. 7A-343, that addresses the elements of publication production described in G.S. 143-170.2 and (ii) an administrative review and approval process to ensure appropriate review and approval of its public documents. The initial guidelines and the administrative review and approval process shall be reported to the Joint Legislative Commission on Governmental Operations by January 1, 1991, and revisions thereto shall be reported to the Joint Legislative Commission on Governmental Operations within six months of adoption."

Sec. 2. G.S. 143-169.1 reads as rewritten:

"§ *143-169.1. State agency public document mailing lists to be updated.*

~~(a)~~ On or before July 1 of each year, beginning with July 1, 1976, the head of every agency of this State shall certify to the Director of the Budget that the mailing lists for each public document issued by his agency have been carefully reviewed, updated and corrected within the previous 12 months. The above date may be extended by the Director of the Budget for 90 days for good cause shown. The reviewed, updated and corrected mailing lists shall be comprised only of those persons and organizations who, within the previous 12 months, have either requested that they be included in such a mailing list or have renewed a request that they be so included, or are recipients contemplated for receipt of the pertinent public document by express provision of statute or judicial order.

~~(b) For the purposes of this Article, the term 'public document' shall mean any annual, biennial, regular or special report or publication of which at least 200 copies are printed, but shall not include intra-agency communications nor agency correspondence.~~

~~(c) For the purposes of this Article, the term 'agency' shall mean and include, as the context may require, State department, institution, commission, committee, board, division, bureau, officer or official; provided, however, the provisions of this section shall not apply to the General Assembly, the Department of Revenue, the Department of~~

~~Commerce, or to the Administrative Office of the Courts and the court system.~~"

Sec. 3. Article 13 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-169.2. Definitions.*

(a) For the purposes of this Article, the term 'public document' shall mean any annual, biennial, regular or special report or publication of which at least 200 copies are printed, but shall not include intra-agency communications nor agency correspondence.

(b) For the purposes of this Article, the term 'agency' shall mean and include, as the context may require, State department, institution, university, commission, committee, board, licensing board, division, bureau, officer or official; provided, however, the provisions of G.S. 143-169.1 shall not apply to the General Assembly, the Department of Revenue, the Department of Commerce, or to the Administrative Office of the Courts and the court system, nor shall the provisions of G.S. 143-170.2 and 143-170.3 apply to the General Assembly or to the Administrative Office of the Courts and the courts system."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

S.B. 405 **CHAPTER 716**

AN ACT TO INCREASE THE MAXIMUM INCOME TAX CREDIT FOR DONATIONS OF REAL PROPERTY FOR LAND CONSERVATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.34 reads as rewritten:

"*§ 105-130.34. Credit for certain real property donations.*

(a) Any corporation that makes a qualified donation of interest in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes, shall be allowed a credit against the taxes imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated to and accepted by either the State, local government or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions pursuant to G.S. 105-130.9; provided, however, that lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to

increase building density levels permitted under such regulations or ordinances shall not be eligible for this credit. The credit allowed under this section may not exceed ~~five thousand dollars ($5,000),~~ twenty-five thousand dollars ($25,000). To support the credit allowed by this section, the taxpayer shall file with its income tax return for the taxable year in which the credit is claimed, a certification by the Department of Natural Resources and Community Development that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

(c) Any unused portion of this credit may be carried forward for the next succeeding five years.

(d) The fair market value, or any portion thereof, of a qualifying donation that is not eligible for a credit pursuant to this section may be considered as a charitable contribution pursuant to G.S. 105-130.9. That portion of the donation allowed as a credit pursuant to this section shall not be eligible as a charitable contribution."

Sec. 2. G.S. 105-151.12 reads as rewritten:

"*§ 105-151.12. Credit for certain real property donations.*

(a) Any person that makes a qualified donation of interests in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes, shall be allowed a credit against the taxes imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, local government or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions pursuant to G.S. 105-147(15) or (16); provided, however, that lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under such regulations or ordinances shall not be eligible for this credit. The credit allowed under this section may not exceed ~~five thousand dollars ($5,000),~~ twenty-five thousand dollars ($25,000). To support the credit allowed by this section, the taxpayer shall file with the income tax return for the taxable year in which the credit is claimed, a certification by the Department of Natural Resources and Community Development that the property donated is suitable for one or more of the valid public benefits set forth by this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

(c) Any unused portion of this credit may be carried forward for the next succeeding five years.

(d) The fair market value, or any portion thereof, of a qualifying donation that is not eligible for a credit pursuant to this section may be considered as a charitable contribution pursuant to G.S. 105-147(15) or (16). That portion of the donation allowed as a credit pursuant to this section shall not be eligible as a charitable contribution.

(e) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form. Where only one spouse is required to file a North Carolina income tax return, such spouse may claim the credit allowed by this section.

(f) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before December 31, 1990, to qualify for the credit allowed by this section."

Sec. 3. This act is effective for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

S.B. 544 **CHAPTER 717**

AN ACT TO MAKE TECHNICAL CORRECTIONS IN THE DISABILITY INCOME PLAN OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-5(a) reads as rewritten:

"(a) Service Retirement Benefits. --

(1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of

membership service or shall have completed 30 years of creditable service.

(2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.

(3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.

(4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an employee other than as a law-enforcement officer shall continue to have the right to commence retirement.

(5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made written application for long-term or extended short-term benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan's Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of notification of the rejection to convert his application to an early or service retirement application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, whichever is later."

Sec. 2. G.S. 135-5(c) reads as rewritten:

"(c) Disability Retirement Benefits of Members ~~Retiring~~ Leaving Service Prior to January 1, 1988. -- The provisions of this subsection shall not be applicable to members in service on or after January 1,

1988. Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

(1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

(2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account

of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a fifty percent (50%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

(1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and

(2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply."

Sec. 3. G.S. 135-5(d4) reads as rewritten:

"(d4) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1982, ~~but~~ Who Left Service prior to January 1, 1988. -- Upon retirement for disability, in accordance with subsection (c) of this section on or after July 1, ~~1982 but prior to January 1, 1988,~~ 1982, a member who left service prior to January 1, 1988 shall receive a service retirement allowance if he has qualified for an unreduced service retirement allowance; otherwise the allowance shall be equal to a service retirement allowance calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance."

Sec. 4. G.S. 135-5(e) reads as rewritten:

"(e) Reexamination of Beneficiaries Retired for Disability. -- The provisions of this subsection shall be applicable to members retired on a disability retirement allowance ~~prior to January 1, 1988~~ and shall not be applicable to members in service on or after January 1, 1988. Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or

physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the Board of Trustees.

(1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months of service in the final 48 months prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the disability beneficiary is earning or is able to earn more than the difference, the portion of his disability retirement allowance not provided by his contributions shall be reduced to an amount which, together with the portion of the disability retirement allowance provided by his contributions and the amount earnable by him shall equal the amount of his gross compensation prior to retirement. This difference shall be increased on January 1 each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of one percent (1/10th of 1%). Should the earning capacity of the disability beneficiary later change, the portion of his disability retirement allowance not provided by his contributions may be further modified. In lieu of the reductions on account of a disability beneficiary earning more than the aforesaid difference, he may elect to convert his disability retirement allowance to a service retirement allowance calculated on the basis of his average final compensation and creditable service at the time of disability and his age at the time of conversion to service retirement. This election is irrevocable. Provided, the provisions of this subdivision shall not apply to beneficiaries of the Law-Enforcement Officers' Retirement System transferred to this Retirement System who commenced retirement on and before July 1, 1981.

(2) Should a disability beneficiary under the age of 60 years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability: provided that, on and

after July 1, 1971, if a disability beneficiary under the age of 62 years is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and, in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of 50 years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

(3) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1971, shall be entitled to an allowance not less than the allowance described in a below reduced by the amount in b below:

a. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service.

b. The actuarial equivalent of the retirement benefits he previously received.

(3a) Notwithstanding the foregoing, a member retired on a disability retirement allowance who is restored to service and subsequently retires on or after July 1, 1985, shall be entitled to an allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement and his creditable service after he was restored to service. Provided, however, any election of an optional allowance cannot be changed unless the member subsequently completes three years of membership service after being restored to service.

(4) As a condition to the receipt of the disability retirement allowance provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired on a disability retirement allowance shall, on or before April 15 of each calendar year, provide the Board of Trustees with a statement of his or her income received as compensation for services, including fees, commissions or similar items, and income received from business, for the previous calendar year. Such statement shall be filed on a form as required by the Board of Trustees.

The Director of the State Retirement System shall contact any State or federal agency which can provide information to substantiate the statement required to be submitted by this subdivision and may enter into agreements for the exchange of information.

(5) Notwithstanding any other provisions of this Article to the contrary, a beneficiary who was a beneficiary retired on a disability retirement with the Law-Enforcement Officers' Retirement System at the time of the transfer of law-enforcement officers employed by a participating employer and beneficiaries last employed by a participating employer to this Retirement System and who also was a contributing member of this Retirement System at that time, shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership. Any beneficiary who retired on a disability retirement allowance as an employee of any participating employer under the Law-Enforcement Officers' Retirement System and becomes employed as an employee other than as a law-enforcement officer by an employer participating in the Retirement System after the aforementioned transfer shall continue to be paid his retirement allowance without restriction and may continue as a member of this Retirement System with all the rights and privileges appendant to membership until January 1, 1989, at which time his retirement allowance shall cease and his subsequent retirement shall be determined in accordance with the preceding subdivision (3a) of this section. Any beneficiary as hereinbefore described who becomes employed as a law-enforcement officer by an employer participating in the Retirement System shall cease to be a beneficiary and shall immediately commence membership and his subsequent retirement shall be

determined in accordance with subdivision (3a) of this section.

(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above."

Sec. 5. G.S. 135-5(f) reads as rewritten:

"(f) Return of Accumulated Contributions. -- Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. Notwithstanding any other provision of Chapter 135, there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the

State by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any agency or subdivision of the State: Provided that, notwithstanding any other provisions of this Chapter, even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be a teacher or State employee, any amount due such agency or subdivision by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such agency or subdivision by the Retirement System upon demand; Provided, further, that such agency or subdivision shall have notified the executive director of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such agency or subdivision nor for any failure by the Retirement System for any reason to make such deductions. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher. Notwithstanding any other provision of law to the contrary, a member who is a beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of this Chapter and who is receiving disabililty benefits under the transition provisions as provided in G.S. 135-112, shall not be prohibited from receiving a return of accumulated contributions as provided in this subsection."

Sec. 6. G.S. 135-5(l) reads as rewritten:

"(l) Death Benefit Plan. -- There is hereby created a Group Life Insurance Plan (hereinafter called the 'Plan') which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of

the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

(1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or

(2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

subject to a minimum of twenty-five thousand dollars ($25,000) and to a maximum of fifty thousand dollars ($50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (l) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

(1) After December 31, 1968 and after he has attained age 70; or

(2) After December 31, 1969 and after he has attained age 69; or

(3) After December 31, 1970 and after he has attained age 68; or

(4) After December 31, 1971 and after he has attained age 67; or

(5) After December 31, 1972 and after he has attained age 66; or

(6) After December 31, 1973 and after he has attained age 65; or

(7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not

yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

(1) For the purpose of determining eligibility only, in this subsection 'calendar year' shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection 'calendar year' shall mean the 12 months beginning January 1 and ending December 31.

(2) Last day of actual service shall be:

a. When employment has been terminated, the last day the member actually worked.

b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).

(3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).

(4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent

of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars ($25,000) nor to exceed fifty thousand dollars ($50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under ~~G.S. 135-106~~ G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of ~~G.S. 135-112(b) and (c)~~ G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars ($5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees."

Sec. 7. G.S. 135-101(3) reads as rewritten:

"(3) 'Benefits' shall mean the monthly disability income payments made pursuant to the provisions of this Article. In the event of death ~~or termination of benefits~~ on or after the first day of a month, the monthly benefit shall not be prorated and shall equal the benefits paid in the previous month."

Sec. 8. G.S. 135-101 is amended by adding two new subdivisions to read:

"(20) 'Trial Rehabilitation' shall mean a return to service in any capacity, if the return occurs within the waiting period as provided in G.S. 135-104 and shall mean a return to service in the same capacity that existed prior to the disability if the return occurs within the short-term disability period as provided in G.S. 135-105.

(21) 'Workers' Compensation' shall mean any disabililty income benefits provided under the North Carolina Workers' Compensation Act, excluding any payments for a permanent partial disability rating."

Sec. 9. G.S. 135-104(a) reads as rewritten:

"(a) A participant shall receive no benefits from the Plan for a period of 60 continuous calendar days from the onset of disability determined as the last actual day of ~~service~~ service, the day of the disabling event if the disabling event occurred on a day other than a normal workday, or the day succeeding at least 365 calendar days after service as a teacher or employee, whichever is later. These 60 continuous calendar days may be considered the waiting period before benefits are payable from the Plan. During this waiting period, a participant may be paid such continuation of salary as provided by an employer through the use of sick leave, vacation leave or any other salary continuation."

Sec. 10. G.S. 135-105 reads as rewritten:

"§ *135-105. Short-term disability benefits.*

(a) Any participant who becomes disabled and is no longer able to perform his usual occupation may, after at least 365 calendar days succeeding his date of initial employment as a teacher or employee and at least one year of contributing membership service, receive a benefit commencing on the first day succeeding the waiting period; provided that the participant's employer and attending physician shall certify that such participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred ~~while the participant was a teacher or employee~~ at the time of active employment and has been continuous thereafter; provided further that the requirement for one year of contributing membership service must

have been earned within 36 calendar months immediately preceding the date of disability and further, salary continuation used during the period as provided in G.S. 135-104 shall count toward the aforementioned one year requirement.

(b) The benefits as provided for in subsection (a) of this section shall commence on the first day following the waiting period and shall be payable for a period of 365 days as long as the participant continues to meet the definition of disability. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of short-term disability benefits; provided further, such election shall not extend the 365 days duration of short-term payments. An election to receive any salary continuation for any part of a given day shall be in lieu of any short-term benefit otherwise payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any short-term benefit otherwise payable."

(c) The monthly benefit as provided in subsection (a) of this section shall be equal to fifty percent (50%) of 1/12th of the annual base rate of compensation last payable to the participant prior to the beginning of the short-term benefit period as may be adjusted for percentage increases as provided under G.S. 135-108 plus fifty percent (50%) of 1/12th of the annual longevity payment to which the participant would be eligible, to a maximum of three thousand dollars ($3,000) per month reduced by monthly payments for Workers' Compensation to which the participant may be entitled. Provided, that should a participant have earnings in an amount greater than the short-term benefit, the amount of the short-term benefit shall be reduced on a dollar-for-dollar basis by the amount that exceeds the short-term benefit.

(d) The provisions of this section shall be administered by the employer and further, the benefits during the first six months of the short-term disability period shall be the full responsibility of and paid by the employer; Provided, further, that upon the completion of the initial six months of the short-term disability period, the employer will continue to be responsible for the short-term benefits to the participant, however, such employer shall notify the Plan on a quarterly basis of the amount of short-term benefits paid and the Plan shall reimburse the employer the amounts so paid.

(e) During the short-term disability period, a beneficiary may return to service for trial rehabilitation for periods of not greater than 40 continuous days of service. Such return will not cause the beneficiary to become a participant and will not require a new waiting period or short-term disability period to commence unless a different

incapacity occurs. The period of rehabilitative employment shall not extend the period of the short-term disability benefits.

(f) A participant or beneficiary of short-term disability benefits or his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, or the employer of the participant or beneficiary, may request the Board of Trustees to have the Medical Board make a determination of eligibility for the short-term disability benefits as provided in this section or to make a preliminary determination of eligibility for the long-term disability benefits as provided in G.S. 135-106. A preliminary determination of eligibility for long-term disability benefits shall not preclude the requirement that the Medical Board make a determination of eligibility for long-term disability benefits.

(g) The Board of Trustees may extend the short-term disability benefits of a beneficiary beyond the benefit period of 365 days for an additional period of not more than 365 days; provided the Medical Board determines that the beneficiary's disability is temporary and likely to end within the extended period of short-term disability benefits. During the extended period of short-term disability benefits, payment of benefits shall be made by the Plan directly to the beneficiary."

Sec. 11. G.S. 135-106 reads as rewritten:

"§ *135-106. Long-term disability benefits.*

(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases or after salary continuation payments cease, whichever is later; Provided, that the Medical Board shall certify that such beneficiary or participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred ~~while a teacher or employee~~ at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual

medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

(b) After the commencement of benefits under this section, the benefits payable under the terms of this section shall be equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable to the participant or beneficiary prior to the beginning of the ~~long-term benefit~~ short-term disability period as may be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would be eligible, to a maximum of three thousand nine hundred dollars ($3,900) per month reduced by any primary Social Security disability benefits and by monthly payments for Workers' ~~Compensation, if any~~ Compensation to which the participant or beneficiary may be entitled, but the benefits payable shall be no less than ten dollars ($10.00) a month. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall not extend the first 36 consecutive calendar months of the long-term disability period. An election to receive any salary continuation for any part of any given day shall be in lieu of any long-term benefit payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term benefit otherwise payable. Notwithstanding the

foregoing, upon the completion of four years from the conclusion of the waiting period as provided in G.S. 135-104, the beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security disability benefit to which the beneficiary might be entitled had the beneficiary been awarded Social Security disability benefits. Provided that, in any event, a beneficiary's benefit shall be reduced by an amount, as determined by the Board of Trustees, equal to a primary Social Security retirement benefit to which the beneficiary might be entitled.

Notwithstanding the foregoing, the long-term disability benefit is payable so long as the beneficiary is disabled until the earliest date at which the beneficiary is eligible for an unreduced service retirement allowance from the Retirement System, at which time the beneficiary would receive a retirement allowance calculated on the basis of the beneficiary's average final compensation at the time of disability as adjusted to reflect compensation increases subsequent to the time of disability and the creditable service accumulated by the beneficiary, including creditable service while in receipt of benefits under the Plan.

(c) Notwithstanding the foregoing, a beneficiary in receipt of long-term disability benefits who has earnings during the first 36 consecutive calendar months of the long-term disability period shall have his long-term disability benefit reduced when the sum of the net long-term disability benefit and the earnings equals one hundred percent (100%) of monthly compensation adjusted as provided under G.S. 135-108. The long-term disability benefit shall be reduced dollar-for-dollar for the amount of earnings in excess of the one hundred percent (100%) monthly limit. Provided further, after the first 36 months of the long-term disability period, a beneficiary's earnings will not result in any reduction of the monthly long-term disability benefit until the monthly earnings equal the net monthly long-term disability benefit. The monthly long-term disability benefit will be reduced by one dollar ($1.00) for each three dollars ($3.00) of monthly earnings in excess of the net long-term disability benefit until the sum of the monthly net long-term benefit and monthly earnings reach one hundred percent (100%) of monthly compensation adjusted as provided under G.S. 135-108, at which point the monthly long-term disability benefit shall be reduced dollar-for-dollar for the amount of earnings in excess of the one hundred percent (100%) monthly limit. Any beneficiary exceeding the earnings limitations shall notify the Plan by the fifth of the month succeeding the month in which the earnings were received of the amount of earnings in excess of the limitations herein provided. Failure to report excess earnings may

result in a suspension or termination of benefits as determined by the Board of Trustees."

Sec. 12. G.S. 135-112(b) reads as rewritten:

"(b) All benefit recipients under the former Disability Salary Continuation Plan provided for in G.S. 135-34 and the rules adopted thereto shall become beneficiaries under this Plan under the same provisions and conditions including the benefit amounts payable as were provided under the former Disability Salary Continuation Plan. Any benefit recipient under the former Disability Salary Continuation Plan who returns to service on or after January 1, 1988, who subsequently becomes disabled due to the same disabling condition within 90 days after restoration to service shall not become a participant of the Disability Income Plan but shall be entitled to a restoration of the disability benefit under the same provisions and conditions, including the benefit amounts payable, as were provided under the former Disability Salary Continuation Plan, and shall be entitled to make application for disability retirement benefits under the Retirement System under the same provisions and conditions as were provided members whose service terminated prior to January 1, 1988."

Sec. 13. Section 29(g) of Chapter 738 of the 1987 Session Laws reads as rewritten:

"(g) G.S. 135-5(e) and ~~G.S. 128-7(e)~~ 128-27(e) are amended by adding a new subdivision to the end of each designated as (6) to read:

'(6) Notwithstanding any other provision to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above.'"

Sec. 13.1. G.S. 128-27(l)(7) is rewritten to read:

"(7) After December 31, 1978, but before ~~July 1, 1988~~ January 1, 1987, and after he has attained age 70."

Sec. 14. This act shall become effective July 1, 1989, except that Section 13 is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

S.B. 894 **CHAPTER 718**

AN ACT TO ELIMINATE DOUBLE TAXATION OF INCOME IN RESPECT OF A DECEDENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-147 is amended by adding a new subdivision to read:

"(29) The amount of inheritance tax attributable to an item of income in respect of a decedent required to be included in gross income under G.S. 105-142.1(a). The amount of inheritance tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance tax paid under Article 1 of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of inheritance tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under G.S. 105-142.1(a) and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

The Secretary of Revenue may provide to a beneficiary of an item of income in respect of a decedent any information contained on an inheritance tax return that the beneficiary needs to compute the deduction allowed by this subdivision."

Sec. 2. G.S. 105-134.6(b), as enacted by House Bill 89 or Senate Bill 51, Chapter __ of the 1989 Session Laws, is amended by adding at the end a new subdivision to read:

"(5) The amount of inheritance tax attributable to an item of income in respect of a decedent required to be included in gross income under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7. The amount of inheritance tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance tax paid under Article 1 of this Chapter on

property transferred to a beneficiary by a decedent exceeds the amount of inheritance tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

The Secretary of Revenue may provide to a beneficiary of an item of income in respect of a decedent any information contained on an inheritance tax return that the beneficiary needs to compute the deduction allowed by this subdivision."

Sec. 3. Sections 1 and 3 of this act are effective for taxable years beginning on or after January 1, 1989. Section 2 of this act shall become effective for taxable years for which G.S. 105-147 is repealed by House Bill 89 or Senate Bill 51, if either bill is enacted by the 1989 General Assembly.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

S.B. 899 **CHAPTER 719**

AN ACT TO CLARIFY THE PAYMENT OF COSTS IN SOME SMALL ESTATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of three dollars ($3.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of twenty-two dollars ($22.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed three thousand dollars ($3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be five dollars ($5.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of ten dollars ($10.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of twelve dollars ($12.00)."

Sec. 2. This act shall become effective October 1, 1989, and shall apply to the estates of decedents dying on or after that date.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

H.B. 53 **CHAPTER 720**

AN ACT TO PROVIDE FOR THE NORTH CAROLINA TEACHER OF THE YEAR TO SERVE AS AN ADVISORY MEMBER TO THE STATE BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-11 reads as rewritten:

"*§ 115C-11. Organization and internal procedures of Board.*

(a) Presiding Officer. The State Board of Education shall elect from its membership a chairman and vice-chairman. A majority of the Board shall constitute a quorum for the transaction of business. Per diem and expenses of the appointive members of the Board shall be provided by the General Assembly. The chairman of the Board shall preside at all meetings of the Board. In the absence of the chairman, the vice-chairman shall preside; in the absence of both the chairman and the vice-chairman, the Board shall name one of its own members as chairman pro tempore.

(a1) Student advisors -- The Governor is hereby authorized to appoint two high school students who are enrolled in the public schools of North Carolina as advisors to the State Board of Education. The student advisors shall participate in State Board deliberations in an advisory capacity only. The State Board may, in its discretion, exclude the student advisors from executive sessions.

The Governor shall make initial appointments of student advisors to the State Board as follows:

(1) One high school junior shall be appointed for a two-year term beginning September 1, 1986, and expiring June 14, 1988; and

(2) One high school senior shall be appointed for a one-year term beginning September 1, 1986, and expiring June 14, 1987. When an initial or subsequent term expires, the Governor shall appoint a high school junior for a two-year term beginning June 15 of that year. If a student advisor is no longer enrolled in the public schools of North Carolina or if a vacancy otherwise occurs, the Governor shall appoint a 2student advisor for the remainder of the unexpired term.

Student advisors shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(a2) State Teacher of the Year Advisor.--Each State Teacher of the Year, as designated by the Department of Public Instruction, shall serve ex officio as advisor to the State Board of Education. Each State Teacher of the Year shall begin service as advisory member to the State Board at the commencement of the teacher's term as State

Teacher of the Year and shall serve for two years. The State Teachers of the Year shall participate in State Board deliberations and committee meetings in an advisory capacity only. The State Board may, in its discretion, exclude the State Teachers of the Year from executive sessions.

In the event a vacancy occurs in the State Teacher of the Year's advisory position, the teacher who was next runner-up to that State Teacher of the Year shall serve as the advisory member to the Board for the remainder of the unexpired term. The State Teacher of the Year advisors to the State Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(b) Regular Meetings of Board. -- The regular meetings of the Board shall be held each month on a day certain, as determined by the Board. The Board shall determine the hour of the meeting, which may be adjourned from day to day, or to a day certain, until the business before the Board has been completed.

(b1) Annual meeting with the State Board of Community Colleges and the Board of Governors of The University of North Carolina. The State Board of Education shall meet with the State Board of Community Colleges and the Board of Governors of The University of North Carolina at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State. The meeting in 1987 and every three years thereafter shall be hosted by the University Board of Governors, the meeting in 1988 and every three years thereafter shall be hosted by the State Board of Education, and the meeting in 1989 and every three years thereafter shall be hosted by the State Board of Community Colleges.

(c) Special Meetings. -- Special meetings of the Board may be set at any regular meeting or may be called by the chairman or by the secretary upon the approval of the chairman: Provided, a special meeting shall be called by the chairman upon the request of any five members of the Board. In case of regular meetings and special meetings, the secretary shall give notice to each member, in writing, of the time and purpose of the meeting, by letter directed to each member at his home post-office address. Such notice must be deposited in the Raleigh Post Office at least three days prior to the date of meeting.

(d) Voting. -- No voting by proxy shall be permitted. Except in voting on textbook adoptions, all voting shall be viva voce unless a record vote or secret ballot is demanded by any member, and a

majority of those present and voting shall be necessary to carry a motion.

(e) Voting on Adoption of Textbooks. -- A majority vote of the whole membership of the Board shall be required to adopt textbooks, and a roll call vote shall be had on each motion for such adoption or adoptions. A record of all such votes shall be kept in the minute book.

(f) Committees. -- The Board may create from its membership such committees as it deems necessary to facilitate its business. The chairman of the Board shall with approval of the majority of the Board appoint members to the several committees authorized by the Board and to any additional committees which the chairman may deem to be appropriate.

(g) Record of Proceedings. -- All of the proceedings of the Board shall be recorded in a well-bound and suitable book, which shall be kept in the office of the Superintendent of Public Instruction, and open to public inspection.

(h) Rules and Regulations. -- The Board shall adopt reasonable rules and regulations not inconsistent herewith, to govern its proceedings which the Board may amend from time to time, which rules and regulations shall become effective when filed as provided by law: Provided, however, a motion to suspend the rules so adopted shall require a consent of two thirds of the members. The rules and regulations shall include, but not be limited to, clearly defined procedures for electing the officers of the State Board referred to in G.S. 115C-11(a), fixing the term of said officers, specifying how the voting shall be carried out, and establishing a date when the first election shall be held."

Sec. 2. Service of the State Teacher of the Year as advisory member to the State Board shall begin with the teacher who is named State Teacher of the Year for 1989-90.

Sec. 3. The State Board of Education shall use funds available to it for support of the Teacher of the Year advisory member position on the State Board.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

H.B. 333 **CHAPTER 721**

AN ACT TO AMEND THE STATE FAIR HOUSING ACT TO CLARIFY PROVISIONS REGARDING DISCRIMINATORY ADVERTISING AND THE ENFORCEMENT PROCEDURES REGARDING A DISCRIMINATION COMPLAINT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 41A-6 reads as rewritten:

"§ 41A-6. Exemptions.

The provisions of G.S. 41A-4 except for subsection (a)(6), do not apply to the following:

(1) The rental of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the lessor or a member of his family resides in one of the housing accommodations;

(2) The rental of a room or rooms in a private house, not a boarding house, if the lessor or a member of his family resides in the house;

(3) Religious institutions or organizations or charitable or educational organizations operated, supervised, or controlled by religious institutions or organizations which give preference to members of the same religion in a real estate transaction, as long as membership in such religion is not restricted by race, color, sex, or national origin;

(4) Private clubs, not in fact open to the public, which incident to their primary purpose or purposes provide lodging, which they own or operate for other than a commercial purpose, to their members or give preference to their members;

(5) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property;

(6) Any person, otherwise subject to its provisions, who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions, if the plan is part of a conciliation agreement entered into by that person under provisions of this Chapter or under the provisions of the Federal Fair Housing Act, 42 U.S.C. § 3601 **et seq.** or is voluntary and is consistent with the purposes thereof;

(7) The sale, rental, exchange, or lease of commercial real estate. For the purposes of this Chapter, commercial real estate means real property which is not intended for residential use."

Sec. 2. G.S. 41A-7 reads as rewritten:

"§ *41A-7. Enforcement.*

(a) Any person who claims to have been injured by an unlawful discriminatory housing practice or who reasonably believes that he will be irrevocably injured by an unlawful discriminatory housing practice may file a complaint with the North Carolina Human

Relations Council. Complaints shall be in writing, shall state the facts upon which the allegation of an unlawful discriminatory housing practice is based, and shall contain such other information and be in such form as the Council requires. Council employees shall assist complainants in reducing complaints to writing and shall assist in setting forth the information in the complaint as may be required by the Council. Within 10 days after receipt of the complaint, the Director of the Council shall ~~furnish a copy of the complaint to the person who allegedly committed or is about to commit the unlawful discriminatory housing practice.~~ serve on the respondent a copy of the complaint and a notice advising the respondent of his procedural rights and obligations under this Chapter. Within 10 days after receipt of the complaint, the Director of the Council shall serve on the complainant a notice acknowledging the filing of the complaint and informing the complainant of his time limits and choice of forums under this Chapter.

No complaint may be filed with the Council under this section during any period in which the Council is not certified by the Secretary of the United States Department of Housing and Urban Development in accordance with 42 U.S.C. § 3610(f) to have jurisdiction over the subject matter of the complaint. Provided, however, that during any such period in which the Council is not certified, any person who claims to have been injured by an unlawful discriminatory practice or who reasonably believes that he will be irrevocably injured by an unlawful discriminatory housing practice may bring a civil action directly in superior court in accordance with the provisions of subsection (j) of this section, except that any such civil action shall be commenced within one year after the occurrence or termination of the alleged unlawful discriminatory housing practice.

(b) A complaint under subsection (a) shall be filed within ~~180 days~~ one year after the alleged unlawful discriminatory housing practice occurred. A respondent may file an answer to the complaint against him within 10 days after receiving a copy of the complaint. With the leave of the Council, which shall be granted whenever it would be reasonable and fair to do so, the complaint and the answer may be amended at any time. Complaints and answers shall be verified.

(c) Whenever another agency of the State or any other unit of government of the State has jurisdiction over the subject matter of any complaint filed under this section, and such agency or unit of government has legal authority equivalent to or greater than the authority under this Chapter to investigate or act upon the complaint, the Council shall be divested of jurisdiction over such complaint. The Council shall, within 30 days, notify the agency or unit of government

of the apparent unlawful discriminatory housing practice, and request that the complaint be investigated in accordance with such authority.

(d) Complaints may be resolved at any time by informal conference, conciliation, or persuasion. Nothing said or done in the course of such informal procedure may be made public by the Council or used as evidence in a subsequent proceeding under this Chapter without the written consent of the person concerned.

(e) ~~Upon receipt of a complaint, the Council shall investigate~~ Within 30 days after the filing of the complaint, the Council shall commence an investigation of the complaint to ascertain the facts relating to the alleged unlawful discriminatory housing practice. If the complaint is not resolved before the investigation is complete, upon completion of the investigation, the Council shall determine whether or not there are reasonable grounds to believe that an unlawful discriminatory housing practice has occurred. ~~The Council shall make a determination within 90 days after receiving the complaint, unless the Council determines that good cause exists for further delay.~~ The Council shall make a determination within 90 days after the filing of the complaint. If the Council is unable to complete the investigation and issue a determination within 90 days after the filing of the complaint, the Council shall notify the complainant and respondent in writing of the reasons for not doing so. If the Council concludes at any time following the filing of a complaint under this section that prompt judicial action is necessary to carry out the purposes of this Chapter, the Council may commence a civil action for, and the court may grant, appropriate temporary or preliminary relief pending final disposition of the complaint. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with G.S. 1A-1, **et seq.**, Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the continuation of the Council's investigation or the initiation of a separate civil action pursuant to other subsections of this section.

(f) If the Council finds no reasonable ground to believe that an unlawful discriminatory housing practice has occurred or is about to occur it shall dismiss the complaint and issue to the complainant a right-to-sue letter which will enable him to bring a civil action in superior court in accordance with the provisions of subsection (j) of this section.

(g) If the Council finds reasonable grounds to believe that an unlawful discriminatory housing practice has occurred or is about to occur it shall proceed to try to eliminate or correct the discriminatory housing practice by informal conference, conciliation, or persuasion. Any conciliation agreement arising out of conciliation efforts by the Council shall be an agreement between the respondent and the

complainant and shall be subject to the approval of the Council. The Council may also be a party to such conciliation agreements. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree, and the Council determines that disclosure is not required to further the purposes of this Chapter.

(h) If the Council is unable to resolve the alleged unlawful discriminatory housing practice it ~~may declare that conciliation efforts have failed~~ shall notify the parties in writing that conciliation efforts have failed. ~~Upon making such a declaration, the Council may:~~

~~(1) Dismiss the complaint and issue to the complainant a right-to-sue letter which will enable him to bring a civil action in superior court; or~~

~~(2) Commence a civil action in superior court, in its own name, or in its own name on behalf of the complainant. In such an action, the Council shall be represented by an attorney employed by the Council, and G.S. 114-2 shall not apply.~~

(i) ~~If after 130 days after a complaint has been filed the Council has failed to resolve the complaint or issue a right-to-sue letter, the Council shall, upon written request of the complainant, issue a right-to-sue letter to the complainant. Issuance of a letter under this subsection shall not prevent the Council from commencing a civil action under subsection (h)(2) of this section which action shall be consolidated with any action filed by the complainant.~~ A complainant may make a written request to the Council for a right-to-sue letter:

(1) Within 10 days following the receipt of a notice of conciliation failure; or

(2) After 130 days following the filing of a complaint, if the Council has not issued a notice of conciliation failure.

Upon receipt of a timely request, the Council shall issue to the complainant a right-to-sue letter which will enable him to bring a civil action in superior court in accordance with the provisions of subsection (j) of this section.

(j) A civil action brought by a complainant pursuant to subsections (f) or (i) of this section shall be commenced within one year after the right-to-sue letter is issued. The court may grant relief, as it deems appropriate, including any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff, compensatory and punitive damages, and may award court costs, and reasonable attorney's fees to the prevailing party~~, other than a State agency or commission;~~. Provided, however, ~~That~~ that a prevailing respondent may be awarded court costs and reasonable attorney's fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

~~If the action is brought by the Council on behalf of a complainant, the court may award actual and punitive damages to the complainant. The court may award punitive damages to a prevailing plaintiff or complainant only if it is shown that the defendant committed a violation of this Chapter with intent to discriminate.~~

(k) After the Council has issued a notice of conciliation failure pursuant to subsection (h) of this section, if the complainant does not request a right-to-sue letter pursuant to subsection (i) of this section, the complainant, the respondent, or the Council may elect to have the claims and issues asserted in the reasonable grounds determination decided in a civil action commenced and maintained by the Council.

(1) An election for a civil action under this subsection shall be made no later than 20 days after an electing complainant or respondent receives the notice of conciliation failure, or if the Council makes the election, not more than 20 days after the notice of conciliation failure is issued. A complainant or respondent who makes an election for a civil action pursuant to this subsection shall give notice to the Council. If the Council makes an election, it shall notify all complainants and respondents of the election.

(2) If an election is made under this subsection, no later than 60 days after the election is made the Council shall commence a civil action in superior court in its own name on behalf of the complainant. In such an action, the Council shall be represented by an attorney employed by the Council, and G.S. 114-2 shall not apply.

In a civil action brought under this subsection, the court may grant relief as it deems appropriate, including any permanent or temporary injunction, temporary restraining order, or other equitable relief and may award to any person aggrieved by an unlawful discriminatory housing practice compensatory and punitive damages. Parties to a civil action brought pursuant to this Chapter shall have the right to a jury trial as provided for by the North Carolina Rules of Civil Procedure.

(l) After the Council has issued a notice of conciliation failure pursuant to subsection (h) of this section, if the complainant does not request a right-to-sue letter pursuant to subsection (i) of this section, and if an election for a civil action is not made pursuant to subsection (k) of this section, the Council shall apply to the Director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at a hearing of the case. Upon receipt of the application, the Director of the Office of Administrative Hearings shall, without undue delay, assign an administrative law judge to hear the case.

(1) All hearings shall be conducted pursuant to the provisions of Article 3A of Chapter 150B of the General Statutes, except that the case in support of the complaint shall be presented at the hearing by the Council's attorney or agent, and G.S. 114-2 shall not apply. The parties to the complaint shall otherwise be given an opportunity to participate in the hearing as provided in G.S. 150B-40(a).

(2) The administrative law judge assigned to hear a case pursuant to this subsection shall sit in place of the Council and shall have the authority of a presiding officer in a contested case under Article 3A of Chapter 150B of the General Statutes. The administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact, proposed conclusions of law, and proposed relief, if appropriate. The Council may make its final decision only after carefully reviewing and considering the administrative law judge's proposal for decision, and after a copy of that proposal for decision is served on the parties and an opportunity is given each party to file exceptions and proposed findings of fact and to present oral and written arguments to the Council.

(3) The Council's final decision may be made by a panel consisting of three Council members appointed by the chairperson of the Council. If the Council, in its final decision, finds that a respondent has violated or is about to violate this Chapter, it may order such relief as may be appropriate, including payment to the complainant by the respondent of compensatory damages and injunctive or other equitable relief. The Council's order may also assess a civil penalty against the respondent:

a. In an amount not exceeding ten thousand dollars ($10,000) if the respondent has not been adjudged to have committed any prior unlawful discriminatory housing practices;

b. In an amount not exceeding twenty-five thousand dollars ($25,000) if the respondent has been adjudged to have committed one other unlawful discriminatory housing practice during the five-year period ending on the date of the filing of the complaint; or

c. In an amount not exceeding fifty thousand dollars ($50,000) if the respondent has been adjudged to have committed two or more unlawful discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint.

If the acts constituting the unlawful discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting an unlawful discriminatory housing practice, then the civil penalties set forth in sub-subdivisions b. and c. of this subsection may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(m) Any person aggrieved by the final agency decision following a hearing may petition for judicial review in accordance with the provisions of G.S. 150B-43 through G.S. 150B-52. The court in a review proceeding may:

(1) Affirm, modify, or reverse the Council's decision in accordance with G.S. 150B-51;

(2) Remand the case to the Council for further proceedings;

(3) Grant to any party such temporary relief, restraining order, or other order as it deems appropriate; or

(4) Issue an order to enforce the Council's order to the extent that the order is affirmed or modified.

(n) If, within 30 days after service on the parties of the Council's decision and order following a hearing, no party has petitioned for judicial review, the Council or the person entitled to relief may file with the clerk of superior court in the county where the unlawful discriminatory housing practice occurred, or in the county where the real property is located, a certified copy of the Council's final order. Upon such a filing, the clerk of the court shall enter an order enforcing the Council's final order."

Sec. 3. G.S. 41A-9 is repealed.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

H.B. 380 **CHAPTER 722**

AN ACT TO STRENGTHEN AND UPDATE THE INSURER HOLDING REGISTRATION AND DISCLOSURE ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 43.

"Insurance Holding Company System Regulatory Act.

"§ 58-560. *Findings; purpose; legislative intent.*

(a) The General Assembly finds that the public interest and the interests of policyholders are or may be adversely affected when any of the following occur:

(1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders.

(2) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this State.

(3) An insurer that is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms that are not fair and reasonable.

(4) An insurer pays dividends to shareholders that jeopardize the financial condition of such insurer.

(b) The General Assembly declares that the policies and purposes of this Article are to promote the public interest by doing all of the following:

(1) Requiring disclosure of pertinent information relating to changes in control of an insurer.

(2) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer.

(3) Providing standards governing material transactions between an insurer and its affiliates.

"§ *58-561. Definitions.*

As used in this Article, unless the context requires otherwise, the following terms have the following meanings:

(1) An 'affiliate' of or person 'affiliated' with a specific person is a person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.

(2) 'Control', including the terms 'controlling', 'controlled by', and 'under common control with', means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing, ten percent

(10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by G.S. 58-565(j) that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) 'Insurance holding company system' means an entity comprising two or more affiliated persons, one or more of which is an insurer.

(4) 'Insurer' includes a person subject to Chapters 57 or 57B of the General Statutes. 'Insurer' does not include (1) an agency, authority, or instrumentality of the United States; any of its possessions and territories; the Commonwealth of Puerto Rico; the District of Columbia; nor a state or political subdivision of a state; nor (2) fraternal benefit societies or fraternal orders.

(5) 'Person' means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert. 'Person' does not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

(6) A 'security holder' of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, or any other security convertible into or evidencing the right to acquire any of the foregoing.

(7) A 'subsidiary' of a specified person is an affiliate controlled by such person indirectly through one or more intermediaries or directly.

(8) 'Voting security' includes any security convertible into or evidencing a right to acquire a voting security.

"§ 58-562. *Subsidiaries of insurers.*

(a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

(2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries.

(3) Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

(4) Management of any investment company subject to or registered pursuant to the federal Investment Company Act of 1940, as amended, including related sales and services.

(5) Acting as a broker-dealer subject to or registered pursuant to the federal Securities Exchange Act of 1934, as amended.

(6) Rendering investment advice to governments, government agencies, corporations, or other organizations or groups.

(7) Rendering other services related to the operations of an insurance business, including actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.

(8) Ownership and management of assets that the parent corporation could itself own or manage.

(9) Acting as an administrative agent for a governmental instrumentality that is performing an insurance function.

(10) Financing of insurance premiums, agents, and other forms of consumer financing.

(11) Any other business activity that is reasonably ancillary to an insurance business.

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of this Chapter, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts that do not exceed the lesser of ten percent (10%) of such insurer's admitted assets or fifty percent (50%) of such insurer's surplus as regards policyholders, provided that after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included: (i) total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by

the purchase of capital stock or issuance of other securities; and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;

(2) Invest any amount in common stock, preferred stock, debt obligation, and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer; provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subdivision (b)(1) of this section or in Article 6 of this Chapter applicable to the insurer. For the purposes of this section, 'the total investment of the insurer' includes: (i) any direct investment by the insurer in an asset; and (ii) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.

(3) With the approval of the Commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (b) of this section are not subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers.

(d) Whether any investment pursuant to subsection (b) of this section meets the applicable requirements of that subsection is to be determined, before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further

time as the Commissioner may prescribe, (i) unless after cessation of control such investment meets the requirements for investment under any other provision of this Chapter, or (ii) unless the Commissioner authorizes the insurer to continue the investment.

"*§ 58-563. Acquisition of control of or merger with domestic insurer.*

(a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer, if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer, unless, at the time any such offer, request, or invitation is made, or prior to the acquisition of such securities, such person has filed with the Commissioner and has simultaneously sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, or acquisition has been approved by the Commissioner in the manner hereinafter prescribed. Provided, however, that the provisions of this paragraph do not apply to any acquisition or proposed acquisition of a domestic insurer's voting securities acquired or sought to be acquired that, when combined with all other voting securities of the domestic insurer acquired directly or indirectly during the preceding 12 months by the person in control and all affiliates of the person in control, do not exceed one percent (1%) of any class or series of the domestic insurer's outstanding voting securities.

Further, no person shall enter into an agreement to merge with or otherwise acquire control of a domestic insurer unless such agreement is conditioned upon the approval of the Commissioner pursuant to this section. No such merger or other acquisition of control shall be effective until a statement containing the information required by this section has been filed with the Commissioner and all other provisions of this section have been complied with and the merger or acquisition of control has been approved by the Commissioner pursuant to this section.

For the purposes of this section a 'domestic insurer' includes any person controlling a domestic insurer. Further, for the purposes of this section, 'person' does not include any securities broker holding, in the usual and customary broker's function, less than twenty percent (20%)of the voting securities of an insurance company or of any person that controls an insurance company.

(b) The statement to be filed with the Commissioner under subsection (a) of this section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) of this section is to be effected (hereinafter called 'acquiring party'), and: (i) if such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; (ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subsubdivision (1)(i) of this subsection.

(2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control; a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates; and the identity of persons furnishing such consideration.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof have been in existence; and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

(4) Any plans or proposals that each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) of this section that each acquiring party proposes to acquire; the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a) of this section; and a statement as to the

method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection (a) of this section that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) of this section in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) of this section during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection (a) of this section made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a) of this section, and any related additional soliciting material that has been distributed.

(11) The term of any agreement, contract, or understanding made with or proposed to be made with any third party in connection with any acquisition of control of or merger with a domestic insurer, and the amount of any fees, commissions, or other compensation to be paid to the third party with regard thereto.

(12) Such additional information as the Commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership, syndicate, or

other group, the Commissioner shall require that the information called for by subdivisions (1) through (12) of this subsection be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the Commissioner shall require that the information called for by subdivisions (1) through (12) of this subsection be given with respect to such corporation, each officer and director of such corporation, and each person who is, directly or indirectly, the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commissioner and sent to such insurer by the filer within two business days after the person learns of such change.

(c) If any offer, request, invitation, agreement, or acquisition referred to in subsection (a) of this section is proposed to be made by means of a registration statement under the Federal Securities Act of 1933, in circumstances requiring the disclosure of similar information under the Federal Securities Exchange Act of 1934, or under any State law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(d) The Commissioner shall approve any merger or other acquisition of control referred to in subsection (a) of this section unless, after a public hearing thereon, he finds any of the following:

(1) After the change of control, the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the issuance of a license to write the kind or kinds of insurance for which it is presently licensed.

(2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance or tend to create a monopoly in this State.

(3) The financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.

(4) Any plans or proposals that the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge

it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(5) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interests of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(6) The acquisition is likely to be detrimental or prejudicial to the insurance-buying public.

(e) The public hearing referred to in subsection (d) of this section shall be held within 120 days after the statement required by subsection (a) of this section is filed, and at least 60 days notice thereof shall be given by the Commissioner to the person filing the statement, to the insurer, and to such other persons as may be designated by the Commissioner. The Commissioner shall make a determination as expeditiously as is reasonably practicable after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral or written arguments; and in connection therewith shall be entitled to conduct discovery proceedings at any time after the statement is filed with the Commissioner pursuant to this section and in the same manner as is presently allowed in the superior courts of this State. In connection with discovery proceedings authorized by this section, the Commissioner is authorized to issue such protective orders and other orders governing the timing and scheduling of discovery proceedings as might otherwise have been issued by a superior court of this State in connection with a civil proceeding. In the event any party fails to make reasonable and adequate response to discovery on a timely basis or fails to comply with any order of the Commissioner with respect to discovery, the Commissioner on his own motion or on motion of any other party or person may order that the hearing be postponed or recessed, shall be convened or reconvened, as the case may be, following proper completion of discovery and reasonable notice to the person filing the statement, to the insurer, and to such other persons as may be designated by the Commissioner.

(f) The Commissioner may retain, at the acquiring person's expense, any attorneys, actuaries, economists, accountants, or other experts not otherwise a part of the Commissioner's staff as may be

reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control.

(g) The expenses of mailing any notices and other materials required by this section shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the Commissioner an acceptable bond or other deposit in a amount to be determined by the Commissioner.

(h) The provisions of this section do not apply to any offer, request, invitation, agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

(i) The following are violations of this section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a) or (b) of this section; or

(2) The effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer, unless the Commissioner has given his approval thereto.

(j) The courts of this State are vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this State who files a statement with the Commissioner under this section; and each such person is deemed to have performed acts equivalent to and constituting an appointment by such person of the Commissioner to be his true and lawful attorney upon whom may be served all legal process in any action, suit, or proceeding arising out of violations of this section. Copies of all such process shall be handled in accordance with the provisions of G.S. 58-153, 58-153.1, and 58-154.

"§ *58-564. Waiver of requirements by Commissioner.*

Any provisions of this Article relating to the filing or production of data, documents, statements, reports; or any other requirements, including requirements of hearings or times of notices, may be waived by the Commissioner in his discretion, with the consent of the domestic insurer, including any person controlling the domestic insurer.

"§ *58-565. Registration of insurers.*

(a) Every insurer that is licensed to do business in this State and that is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section and G.S. 58-566(a). Such

insurer shall also file a copy of its registration statement and any amendments thereto in each state in which that insurer is authorized to do business if requested by the insurance regulator of that state. Any insurer that is subject to registration under this section shall register within 30 days after it becomes subject to registration, and an amendment to the registration statement shall be filed by March 1 of each year for any changes that may have occurred during the previous calendar year; unless the Commissioner for good cause shown extends the time for registration or filing, and then within such extended time. The Commissioner may require any insurer that is a member of a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulator of its domiciliary jurisdiction.

(b) Every insurer subject to registration shall file the registration statement on a form prescribed by the Commissioner, which shall contain the following current information:

(1) The bylaws, capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer.

(2) The identity and relationship of every member of the insurance holding company system.

(3) The following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between such insurer and its affiliates or other third parties where indicated:

a. Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

b. Purchases, sales, or exchange of assets.

c. Transactions not in the ordinary course of business.

d. Guarantees or undertakings for the benefit of an affiliate or other third party that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

e. All management agreements, service contracts, and cost-sharing arrangements.

f. Reinsurance agreements.

g. Dividends and other distributions to shareholders.

h. Consolidated tax allocation agreements.

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner.

(c) No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purposes of this section. Unless the Commissioner by rule or order provides otherwise, all sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (1/2%) or less of an insurer's admitted assets as of the 31st day of December next preceding are not material for the purposes of this section.

(d) Subject to G.S. 58-566(b), each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within 15 business days following the declaration thereof.

(e) Any person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this Article.

(f) The Commissioner shall terminate the registration of any insurer that demonstrates that it no longer is a member of an insurance holding company system.

(g) The Commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(h) The Commissioner may allow an insurer that is authorized to do business in this State and that is part of an insurance holding company system to register on behalf of any affiliated insurer that is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.

(i) The provisions of this section do not apply to any insurer, information, or transaction if and to the extent that the Commissioner by rule or order exempts the same from the provisions of this section.

(j) Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section that may arise out of the insurer's relationship with such person unless the Commissioner disallows such a disclaimer. The Commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be

heard and after making specific findings of fact to support such disallowance.

(k) The failure to file a registration statement or any summary of the registration statement thereto required by this section within the time specified for such filing is a violation of this section.

"*§ 58-566. Standards and management of an insurer within a holding company system.*

(a) Transactions within a holding company system to which an insurer subject to registration is a party are subject to all of the following standards:

(1) The terms shall be fair and reasonable.

(2) Charges or fees for services performed shall be reasonable.

(3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(4) The books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(5) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least 30 days prior thereto, or such shorter period as the Commissioner permits, and the Commissioner has not disapproved it within such period:

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided such transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the 31st day of December next preceding.

(2) Loans or extensions of credit to any person who is not affiliated, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit

to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions equal or exceed: (i) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (ii) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the 31st day of December next preceding.

(3) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

(4) All management agreements that would place control of the insurer outside of the insurance holding company system.

(5) All service contracts or cost-sharing arrangements wherein the annual aggregate cost to the insurer would equal or exceed the amounts specified in subdivision (1) of this subsection.

(6) Any material transactions, specified by rule, that the Commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section authorizes or permits any transactions that, in the case of an insurer, not a member of the same holding company system, would be otherwise contrary to law. A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the Commissioner determines that such separate transactions were entered into over any 12-month period for such purpose, he may exercise his authority under G.S. 58-570. The Commissioner, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (a) of this section and whether they may adversely affect the interests of policyholders. The Commissioner shall be notified within 30 days after any investment of a domestic insurer in any one corporation if, as a result of any such investment, the total investment

in such corporation by the insurance holding company system exceeds ten percent (10%) of such corporation's voting securities.

(c) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) 30 days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment or (ii) the Commissioner has approved such payment within such 30-day period.

For the purposes of this section, an 'extraordinary dividend' or 'extraordinary distribution' includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of (i) ten percent (10%) of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer; or the greater of (i) the net income or (ii) the net investment income, if such insurer is not a life insurer, for the 12-month period ending the 31st day of December next preceding; but does not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer may carry forward income from the previous two calendar years that has not already been paid out as dividends.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the Commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (i) the Commissioner has approved the payment of such a dividend or distribution or (ii) the Commissioner has not disapproved such payment within the 30-day period referred to above.

(d) For the purposes of this Article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, all of the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several kinds of insurance.

(3) The number and size of risks insured in each kind of insurance.

(4) The extent of the geographic dispersion of the insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance program.

(6) The quality, diversification, and liquidity of the insurer's investment portfolio.

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

(8) The surplus as regards policyholders maintained by other comparable insurers.

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

"§ 58-567. *Examination.*

(a) Subject to the limitation contained in this section and in addition to the powers that the Commissioner has under other provisions of this Chapter relating to the examination of insurers, the Commissioner also has the power to order any insurer registered under G.S. 58-565 or any acquiring party to produce such records, books, or other information in the possession of the insurer or its affiliates or the acquiring party as are reasonably necessary to ascertain the financial condition of such insurer or acquiring party or to determine compliance with this Chapter. In the event such insurer or acquiring party fails to comply with such order, the commissioner shall have the power to examine such insurer or its affiliates or such acquiring party to obtain such information.

(b) The Commissioner may retain, at the expense of the registered insurer or acquiring party that is being examined, such attorneys, actuaries, economists, accountants, and other experts not otherwise a part of the Commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (a) of this section. Any persons so retained shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

(c) Each registered insurer or acquiring party producing records, books, or papers for examination pursuant to subsection (a) of this section is liable for and shall pay the expenses of such examination in accordance with G.S. 58-16 and G.S. 58-63.

(d) The Commissioner shall exercise his power under subsection (a) of this section only if the examination of the insurer or acquiring party under other provisions of this Chapter is inadequate or the interests of the policyholders of such insurer may be adversely affected.

"§ 58-568. *Confidential treatment.*

All information, documents, and copies thereof obtained by or disclosed to the Commissioner or any other person in the course of an

examination or investigation made pursuant to G.S. 58-567, and all information reported pursuant to G.S. 58-565 and G.S. 58-566, shall be given confidential treatment; shall not be subject to subpoena; and shall not be made public by the Commissioner, the NAIC, or any other person, except to insurance regulators of other states, without the prior written consent of the insurer or acquiring party to which it pertains unless the Commissioner, after giving the insurer and its affiliates or the acquiring party that would be affected thereby notice and opportunity to be heard, determines that the interest of the insurer's policyholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he considers appropriate.

"§ 58-569. *Injunctions; prohibitions against the voting of securities; sequestration of voting securities.*

(a) Whenever it appears to the Commissioner that any person has committed or is about to commit a violation of this Article or of any rule or order of the Commissioner under this Article, the Commissioner may apply to the Superior Court of Wake County for an order enjoining such person from violating or continuing to violate this Article or any such rule or order; and for such other equitable relief as the nature of the case and the interest of the domestic insurer's policyholders or the public may require.

(b) No security that is the subject of any agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of the provisions of this Article or of any rule or order of the Commissioner under this Article, may be voted at any shareholder's meeting nor may be counted for quorum purposes; and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding. No action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this State have so ordered. If an insurer or the Commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Article or of any rule or order issued by the Commissioner under this Article, the insurer or the Commissioner may apply to the Superior Court of Wake County to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of G.S. 58-563 or any rule or order of the Commissioner under that section to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders or the public may require.

(c) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Article or any rule or order of the Commissioner under this Article, the Superior Court of Wake County may, on such notice as the court considers appropriate and upon the application of the insurer or the Commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such order with respect thereto as may be appropriate to effectuate the provisions of this Article

Notwithstanding any other provisions of law, for the purposes of this Article the sites of the ownership of the securities of domestic insurers are in this State.

"§ *58-570. Sanctions.*

(a) Any person failing, without just cause, to file any registration statement as required in this Article shall pay, after notice and hearing, civil penalty of one hundred dollars ($100.00) for each day's delay, not to exceed a total penalty of one thousand dollars ($1,000), to the Commissioner, who shall forward the clear proceeds to the General Fund of this State.

(b) Every director or officer of an insurance holding company system who knowingly and willfully violates, participates in, or assents to, or who knowingly and willfully permits any of the officers or agents of the insurer to engage in transactions or make investments that have not been properly reported or submitted pursuant to G.S. 58-565(a), 58-566(b), or 58-566(c), or that violate this Article, shall pay, in his individual capacity, after notice and hearing, a civil penalty of one hundred dollars ($100.00) per violation, not to exceed a total penalty of one thousand dollars ($1,000), to the Commissioner, who shall forward the clear proceeds to the General Fund of this State.

(c) Whenever it appears to the Commissioner that any insurer subject to this Article or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract that is subject to G.S. 58-566 and that would not have been approved had such approval been requested, the Commissioner may order the insurer to immediately cease and desist from any further activity under that transaction or contract. After notice and hearing the Commissioner may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors, or the public.

(d) Whenever it appears to the Commissioner that any insurer or any director, officer, employee, or agent thereof has knowingly and willfully committed a violation of this Article, the Commissioner may cause criminal proceedings to be instituted by the Superior Court of Wake County against such insurer or the responsible director, officer, employee, or agent thereof. Any insurer that knowingly and willfully

violates this Article may be fined not more than one thousand dollars ($1,000). Any individual who knowingly and willfully violates this Article is guilty of a Class J felony and is subject to a fine in his individual capacity, imprisonment, or both, in the discretion of the court.

(e) Any officer, director, or employee of an insurance holding company system who knowingly and willfully subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the Commissioner in the performance of his duties under this Article, is guilty of a Class J felony, and is subject to a fine, imprisonment, or both, in the discretion of the court. Any fines imposed shall be paid by the officer, director, or employee in his individual capacity.

"§ *58-571. Receivership.*

Whenever it appears to the Commissioner that any person has committed a violation of this Article that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the Commissioner may proceed as provided in Article 46 of this Chapter.

"§ *58-572. Recovery.*

(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under such order has a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary or subsidiaries to a director, officer, or employee, where the distribution or payment pursuant to (i) or (ii) above is made at any time during the one year preceding the petition for liquidation or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c), and (d) of this section.

(b) No such distribution is recoverable if the parent or affiliate shows that when paid such distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person that was a parent corporation or holding company or a person that otherwise controlled the insurer or affiliate at the time such distributions were paid is liable up to the amount of distributions or payments under subsection (a) of this section such person received. Any person who otherwise controlled the insurer at the time such

distributions were declared is liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the insurer to pay its contractual obligations and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) of this section is insolvent or otherwise fails to pay claims due from it pursuant to that subsection, its parent corporation, holding company, or person who otherwise controlled it at the time that the distribution was paid, are jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

"§ *58-573. Revocation, suspension, or nonrenewal of insurer's license.*

Whenever it appears to the Commissioner that any person has committed a violation of this Article that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license to do business in this State for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

"§ *58-574. Judicial review; mandatory injunction or writ of mandamus.*

(a) Any person aggrieved by any order made by the Commissioner pursuant to this Article may appeal in accordance with G.S. 58-9.3.

(b) Any person aggrieved by any failure of the Commissioner to act or make a determination required by this Article may petition the Superior Court of Wake County for a mandatory injunction or a writ of mandamus directing the Commissioner to act or make such determination forthwith."

Sec. 2. Article 12A of Chapter 58 of the General Statutes is repealed.

Sec. 3. G.S. 58-86.3 reads as rewritten:

"§ *58-86.3. Exchange of securities.*

~~Any domestic insurance company with capital stock (hereinafter referred to as "domestic company") may adopt a plan of exchange providing for the exchange by its shareholders of their stock in the domestic company for (i) shares of stock issued by any other domestic stock insurance company or other domestic stock corporation organized or reorganized under the laws of this State -- such other corporation being hereinafter referred to as the "acquiring corporation"; (ii) other securities issued by the acquiring corporation;~~

~~(iii) cash; (iv) other consideration; (v) any combination of such stock, such other securities, cash or other consideration. For the purpose of this Article, a "domestic company" or "domestic stock insurance company" shall mean a business corporation or a stock insurance company, respectively, organized and existing under the laws of the State of North Carolina.~~ Any domestic stock insurance company may adopt a plan of exchange providing for the exchange by its shareholders of their stock in the domestic company for shares of stock issued by any other stock insurance company or other stock corporation (hereinafter referred to as the 'acquiring corporation'); other securities issued by the acquiring corporation; cash; other consideration; or any combination thereof. For the purpose of this Article, 'domestic stock insurance company' means a stock insurance company organized and existing under the laws of this State."

Sec. 3.1. Section 36 of Chapter 485 of the 1989 Session Laws reads as rewritten:

"Sec. 36. G.S. 58-79.1(c) is amended by adding a new subdivision to read:

'(11) Electronic computer or data processing apparatus, including software, and ~~mechanical machines~~ related equipment constituting a data processing, record keeping, or ~~and~~ accounting system or systems if the cost of such system or systems is at least twenty-five thousand dollars ($25,000), but not more than two percent (2%) of its admitted assets, which cost shall be amortized in full over a period not to exceed 10 calendar years.'"

Sec. 4. In the event any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

H.B. 457 **CHAPTER 723**

AN ACT TO EXCLUDE FROM AD VALOREM TAXATION REAL AND PERSONAL PROPERTY OWNED BY NONPROFIT ORGANIZATIONS AND LEASED BY UNITS OF GOVERNMENT FOR PUBLIC PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-275 is amended by adding a new subdivision to read:

"(39) Real and personal property that is: (i) owned by a nonprofit corporation organized upon the request of a local government unit for the sole purpose of financing projects for public use, (ii) leased to a unit of local government whose property is exempt from taxation under G.S. 105-278.1, and (iii) used in whole or in part for a public purpose by such unit of local government. If only part of the property is used for a public purpose, only that part is exempt from the tax. This subdivision shall not apply if any distributions are made to members, officers, or directors of the nonprofit corporation."

Sec. 2. G.S. 105-282.1(a) reads as rewritten:

"(a) Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled thereto. Except as provided below, an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. If the property covered by the application is located within a municipality, that fact shall be shown on the application. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

(1) The United States government, the State of North Carolina and the counties and municipalities of the State are exempted from the requirement that owners file applications for exemption.

(2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (33), or (34), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion of that property.

(3) After an owner of property entitled to exemption under G.S. 105-277.1, 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or exclusion under G.S. 105-275(3), ~~(7) or~~ (7), (12) or (39) or G.S. 105-278 has applied for exemption and the exemption has been approved, such owner shall not be required to file applications in subsequent years except in the following circumstances:

a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or

b. There is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption.

(4) Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subdivision applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed."

Sec. 3. This act is effective for taxable years beginning on or after January 1, 1989. Notwithstanding the provisions of G.S. 105-282.1(a), an application for the exclusion provided in this act for the 1989 tax year shall be considered timely if it is filed on or before September 1, 1989.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

H.B. 516 **CHAPTER 724**

AN ACT TO ESTABLISH AN ASBESTOS HAZARD MANAGEMENT PROGRAM AND TO INCREASE THE PERCENTAGE OF THE BUDGET FOR THE HAZARDOUS WASTE MANAGEMENT REGULATORY PROGRAM WHICH MAY COME FROM HAZARDOUS WASTE FEES IMPOSED UNDER G.S. 130A-294.1.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 19.

"Asbestos Hazard Management.

"§ *130A-444. Definitions.*

Unless a different meaning is required by the context, the following definitions apply throughout this Article:

(1) 'AHERA' means Title II, Asbestos Hazard Emergency Response, of the Toxic Substances Control Act, Pub. L.

99-519, 100 Stat. 2970, 15 U.S.C. § 2601 *et seq.*, as amended.

(2) 'Asbestos' means asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite.

(3) 'Asbestos containing material' means material which contains more than one percent (1%) asbestos by area, including friable asbestos containing material and nonfriable asbestos containing material.

(4) 'Abatement' means work performed to repair, maintain, remove, isolate, or encapsulate asbestos containing material. The term does not include inspections, preparation of management plans, abatement project design, taking of samples, or project overview.

(5) 'Friable' means any material that when dry can be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such material becomes damaged to the extent that when dry it can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) 'Management' means all activities related to asbestos containing material, including inspections, preparation of management plans, abatement project design, abatement, project overview, and taking of samples.

(7) 'Public area' means those areas in any building other than a residence that are not covered under the Occupational Safety and Health Act of 1970, Pub. L. 91-596, 84 Stat. 1590, 29 U.S.C. § 651 *et seq.*, as amended.

(8) 'Removal' means stripping, chipping, sanding, sawing, drilling, scraping, sucking, and other methods of separating material from its installed location in a building.

(9) 'Residence' means any single family dwelling or any multi-family dwelling of fewer than 10 units.

"*§ 130A-445. Management of asbestos containing material in schools.*

All school buildings subject to the provisions of AHERA shall be inspected for asbestos containing materials and shall prepare and submit management plans to the Department. The Commission shall adopt rules governing school management plans. These rules shall specify the content and format of plans, the plan review and approval process, schedules and methods for implementation of approved plans, and periodic inspection requirements.

"*§ 130A-446. Asbestos exposure standard for public areas.*

The Commission shall adopt rules to establish a maximum airborne asbestos exposure level for public areas. Such rules shall also specify sampling and analysis procedures.

"*§ 130A-447. Accreditation of persons performing asbestos management.*

(a) No person shall commence or continue to perform asbestos management activities unless he has been accredited by the Department. The Commission shall adopt rules governing the accreditation of such persons. Such rules shall include categories of accreditation and shall specify appropriate education, experience, and training requirements. The rules shall establish separate categories of accreditation for inspectors, management planners, abatement designers, supervisors, workers, air monitors, and management consultants. These rules shall be at least as stringent as the accreditation plan required under AHERA and regulations adopted pursuant thereto.

(b) A person who applies for accreditation in the worker category may engage in asbestos containing material management activities as though he were accredited in the worker category for up to 90 days after the date he submits his application. No person whose application is rejected may continue to engage in asbestos containing material management activities under this subsection.

(c) The following persons are exempt from the accreditation requirements:

(1) The owner or operator of a building, other than school buildings subject to the provisions of AHERA, and his permanent employees when performing asbestos containing material management activities in nonpublic areas of the building;

(2) A person performing asbestos containing material management activities in his personal residence;

(3) Governmental regulatory personnel performing asbestos containing material management services under authority of federal, State, or local regulations or rules; and

(4) Persons licensed by the General Contractors Licensing Board, State Board of Examiners of Plumbing and Heating Contractors, State Board of Examiners of Electrical Contractors, or the State Board of Refrigeration Examiners when engaged in activities associated with their license when such activities disturb less than 35 cubic feet, 160 square feet, or 260 linear feet of asbestos containing material per job, or when engaged in such activities under the supervision of an accredited supervisor.

"*§ 130A-448. Asbestos management accreditation fees.*

The Department shall establish and collect asbestos containing material management accreditation and annual renewal fees to support the asbestos hazard management program. The fees shall not exceed one hundred dollars ($100.00) per accreditation category, except that the fee for the abatement worker category shall not exceed twenty-five dollars ($25.00). A person who is accredited in more than one category shall pay a fee for each category.

"*§ 130A-449. Asbestos containing material removal permits.*

No person shall engage in asbestos abatement involving more than 35 cubic feet, 160 square feet, or 260 linear feet per job of asbestos containing material without an asbestos containing material removal permit issued by the Department. The Commission shall adopt rules governing such permits. Such rules may provide for exemption from the requirements of this section.

"*§ 130A-450. Asbestos containing material removal permit fees.*

The Department shall establish and collect an application fee for asbestos containing material removal permits to support the asbestos hazard management program. The fee shall not exceed one percent (1%) of the contracted price or twenty cents ($.20) per square foot or linear foot of asbestos containing material to be removed, whichever is greater.

"*§ 130A-451. Commission to adopt rules.*

For the protection of the public health, the Commission shall adopt rules to implement this Article and AHERA."

Sec. 2. Until the Commission establishes the rules required by this Article, the maximum airborne asbestos exposure level for public areas shall be 0.01 fibers greater than five microns in length per cubic centimeter of air, to be measured in public areas during normal occupancy.

Sec. 3. Accreditations and reaccreditations issued by the Department under the Asbestos Hazard Emergency Response Act prior to the effective date of this act shall remain valid until they expire or are suspended or revoked.

Sec. 4. G.S. 130A-294.1(c) is rewritten to read:

"(c) It is the intent of the General Assembly that the total funds collected per year pursuant to this section ~~shall~~ not exceed ~~twenty-five percent (25%)~~ thirty percent (30%) of the total funds budgeted from all sources for the hazardous waste management program. This subsection shall not be construed to limit the obligation of any person to pay any fee imposed by this section."

Sec. 5. Persons not required to be accredited under the Asbestos Hazard Emergency Response Act shall have until 1 November 1989 to become accredited under this act. Asbestos containing material removal permits shall be required for asbestos

material containing material abatement activities commenced on or after 1 November 1989.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

H.B. 746 **CHAPTER 725**

AN ACT TO AMEND THE STRUCTURAL PEST CONTROL LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-65.24 reads as rewritten:

"§ *106-65.24. Definitions.*

For the purposes of this Article, the following terms, when used in the Article or the rules and regulations, or orders made pursuant thereto, shall be construed respectively to mean:

(1) 'Animal' means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(1a) 'Applicant for a certified applicator's identification card' means any person making application to use restricted use pesticides in any phase of structural pest control.

(2) 'Applicant for a license' means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this Article.

(3) 'Attractants' means substances, under whatever name known, which may be toxic to insects and other pests but are used primarily to induce insects and other pests to eat poisoned baits or to enter traps.

~~(3a) 'Branch office' means and includes any place of doing business which has two or more employees engaged in the control of insect pests, rodents, or wood-destroying organisms.~~

(3b) 'Call office' means any office or telephone answering service other than a licensee's home office which is used by a licensee to conduct structural pest control work and which employs no more than one individual engaged in structural pest control work.

(4) 'Certified applicator' means any individual who is certified under G.S. 106-65.25 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(5) 'Commissioner' means the Commissioner of Agriculture of the State of North Carolina.

(6) 'Committee' means the Structural Pest Control Committee.

(6a) 'Deviation' means failure of the licensee or certified applicator or registered technician card holder to follow any rule adopted by the Committee under provisions of this Article.

(7) 'Device' means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(8) Repealed by Session Laws 1975, c. 570, s. 4.

(8a) 'Director' means the Director of the Structural Pest Control Division of the Department of Agriculture.

(9) 'Employee' means any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.

(9a) 'Enforcement agency' means the Structural Pest Control Division of the Department of Agriculture.

(10) 'Fumigants' means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.

(11) 'Fungi' means wood-decaying fungi.

(11a) 'Home office' means the licensee's principal place of business.

(12) 'Insect' means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class

Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and sowbugs.

(13) 'Insecticides' means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(14) 'Label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(14a) The term 'labeling' means all labels and other written, printed, or graphic matter:

a. Upon the pesticide (or device) or any of its containers or wrappers;

b. Accompanying the pesticide (or device) at any time;

c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by the law to conduct research in the field of pesticides.

(15) 'Licensee' means the designated person in charge of the business establishment or business entity, whether it be individual, firm, partnership, corporation, association or any organization, or any combination thereof, engaged in pest control work covered under the provisions of this Article. Each branch office of a business establishment is to be in charge of a person who has a license herein provided for.

(16) 'Person' means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(17) 'Pest' means any living organism, including but not limited to, insects, rodents, birds, and fungi, which the Commissioner declares to be a pest.

(18) 'Pesticide' means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

(19) 'Registered pesticide' means a pesticide which has been registered by federal and/or State agency responsible for registering pesticides.

(19a) 'Registered technician' means any individual who is required to be registered with the Structural Pest Control Division under G.S. 106-65.31.

(20) 'Repellents' means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.

(21) '~~Restricted-use~~ Restricted use pesticide' means a pesticide which has been designated as such by the federal and/or State agency responsible for registering pesticides.

(22) 'Rodenticides' means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

(23) 'Structural pest control' means the control of wood-destroying organisms or household pests (including, but not limited to, animals such as moths, cockroaches, ants, beetles, flies, mosquitoes, ticks, wasps, bees, fleas, mites, silverfish, millipedes, centipedes, sowbugs, crickets, termites, wood borers, etc.), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, attractants, rodenticides, fungicides, and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings, and other structures (including household structures, commercial buildings and other structures in all stages of construction), and outside areas, as well as all phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.

(24) 'Under the direct supervision of a certified applicator' means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not

physically present at the time and place the pesticide is applied."

Sec. 2. G.S. 106-65.25 reads as rewritten:

"*§ 106-65.25. Phases of structural pest control: license required; exceptions.*

~~(a) Structural pest control is divided into the following phases:~~

~~(1) Control of wood-destroying organisms by any method other than fumigation.~~

~~(2) Control of household pests by any method other than fumigation.~~

~~(3) Fumigation.~~

~~and a license is required for each such phase, and it shall be unlawful for any person, firm, corporation, association or any organization or combination thereof to engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control unless there shall first be secured a valid license therefor, issued by the Structural Pest Control Committee, and signed by the Commissioner of Agriculture.~~

~~(b) This Article shall not apply to any person doing work on his own property or to any regular employee of any person, firm or corporation doing work on the property of such person, firm or corporation, under the direct supervision of the person who owns or is in charge of the property on which work is being done unless a restricted use pesticide is being used. Any person, including agents or agencies of the federal, State or local governments, using a restricted use pesticide, whether it be on his own property or on the property of another in, on, or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial establishments including warehouses and grain elevators and any other structures and adjacent areas, public or private, or for the protection of stored, processed, or manufactured products in any phase of structural pest control, must (i) qualify as a certified applicator for that phase of structural pest control, or (ii) be under the direct supervision of a certified applicator possessing a valid identification card for that phase of structural pest control.~~

~~(b1) Persons who (i) demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration and/or (ii) conduct field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides must possess a valid certified applicator's identification card. Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group~~

~~includes local, State, federal, commercial and other persons conducting field research on or utilizing restricted use pesticides.~~

~~The above standards do not apply to the following persons for purposes of these regulations:~~

~~(1) Persons conducting laboratory type research involving restricted use pesticides; and~~

~~(2) Doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the course of their normal practice.~~

~~(c) Any person issued an original license after October 21, 1976, for any one or any combination of the three phases shall be deemed to be a 'certified applicator' to use or supervise the use of pesticides which are classified for restricted use so long as the pesticides are being used only in the phase of structural pest control for which the person is licensed.~~

(a) The Committee shall classify license phases to be issued under this Article. Separate phases or subphases shall be specified for:

(1) Control of household pests by any method other than fumigation ('P' phase);

(2) Control of wood-destroying organisms by any method other than fumigation ('W' phase); and

(3) Fumigation ('F' phase).

(b) It shall be unlawful for any person to act in the capacity of a structural pest control licensee, advertise as, offer to engage in, or engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control unless he is licensed as provided for in this Article. A license is required for each phase of structural pest control. No person may hold more than one license for each phase. The licensee shall be responsible for the supervision of the work performed under his license.

(c) A licensee may not establish any office other than his home office from which more than one employee is performing structural pest control work unless a separate licensee is placed in charge of that office.

(d) A license is not required for any person (or his full-time regular employees) doing structural pest control work on his own property: provided, however, that no fee may be charged for structural pest control work performed by any such person.

(e) Any person who uses a restricted use pesticide in any phase of structural pest control, whether it be on his own property or on the property of another, must:

(1) Qualify as a certified applicator for that phase of structural pest control; or

(2) Be under the direct supervision of a certified applicator possessing a valid identification card for that phase of structural pest control.

(f) Persons who demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration or conduct field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides must possess a valid certified applicator's identification card. Included in the first group are such persons as extension representatives demonstrating pesticide products and those individuals demonstrating methods used on public programs. The second group includes local, State, federal, commercial, and other persons conducting field research on or utilizing restricted use pesticides.

This subsection does not apply to the following persons:

(1) Persons conducting laboratory-type research involving restricted use pesticides; or

(2) Doctors of medicine and doctors of veterinary medicine applying restricted use pesticides as drugs or medication during the course of their normal practice.

(g) Any person issued a license for any one or any combination of the phases of structural pest control shall be deemed to be a 'certified applicator' to use or supervise the use of restricted use pesticides so long as the pesticides are being used only in the phase(s) of structural pest control for which the person is licensed.

(h) Licenses and certified applicator's identification cards may only be issued to individuals. License certificates and certified applicator's identification cards shall be issued in the name of the individual, shall bear the name and address of his business or employer's business and shall indicate the phase or phases for which the individual is qualified and such other information as the Committee may specify."

Sec. 3. G.S. 106-65.27 reads as rewritten:

"*§ 106-65.27. Examinations of applicants; fee; license not transferable.*

(a) Certified Applicator. -- All applicants for a certified applicator's identification card shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Competency shall be determined on the basis of written examinations to be provided and administered by the Committee and, as appropriate, performance testing. Testing shall be based upon examples of problems and situations appropriate to the particular phase or subphase ~~phases~~ of structural pest control for which application is made and shall include, ~~include~~ where ~~relevant~~ relevant, the following areas of competency:

(1) Label and labeling comprehension.

(2) Safety factors associated with pesticides -- toxicity, precautions, first aid, proper handling, etc.
(3) Influence of and on the environment.
(4) Pests -- identification, biology, and habits.
(5) Pesticides -- types, formulations, compatibility, hazards, etc.
(6) Equipment -- types and uses.
(7) Application techniques.
(8) Laws and regulations.

An applicant for a certified applicator's identification card shall submit ~~with his application for examination~~ an examination fee of ten dollars ($10.00) for each phase or subphase ~~of the phases~~ of structural pest control in which the applicant ~~he~~ chooses to be examined. An examination for more than one phase or subphase ~~one or more phases of structural pest control~~ may be taken at the same ~~time.~~ time at any regularly scheduled examination. ~~If an applicant fails to pass an examination for one or more phases of structural pest control, he shall be entitled to take one additional examination, at a regularly scheduled examination, without the payment of another examination fee.~~ Frequency of such examinations shall be ~~in~~ at the discretion of the Committee, ~~consideration being given to the number of applications received,~~ provided that a minimum of two examinations ~~shall~~ be given annually. The examination will cover each phase or subphase ~~the phase or phases~~ of structural pest control for which application is being made. ~~The ten dollar ($10.00) fee shall not apply to agents or agencies of the federal, State, or local governments.~~

(b) License. -- Each applicant for an original license must demonstrate upon written examination, to be provided and administered by the Committee, his competency as a structural pest control operator for the phase or subphase ~~phases~~ in which he is applying for a license. Frequency of such examinations shall be at ~~in~~ the discretion of the Committee, ~~consideration being given to the number of applications received,~~ provided that a minimum of two examinations shall be given annually. The examination will cover each phase or subphase ~~the phase or phases~~ of structural pest control for which application is being made. All applicants for a license shall register with the Division on a prescribed form. A license examination fee of twenty-five dollars ($25.00) shall be charged for each phase or subphase of structural pest control in which the applicant chooses to be examined. An examination for more than one phase or subphase of structural pest control may be taken at the same time.

~~An applicant shall submit with his application for examination an examination fee of twenty-five dollars ($25.00) for each of the phases of structural pest control in which he chooses to be examined. An~~

~~examination for one or more phases of structural pest control may be taken at the same time. If an applicant fails to pass an examination for one or more phases of structural pest control, he shall be entitled to take one additional examination, at a regularly scheduled examination, without the payment of another examination fee. Agents or agencies of the federal, State or local governments are not exempt from this fee.~~

(c) ~~A license shall not be transferable. When there is a transfer of ownership, management or operation of a business of a licensee hereunder, there shall be not more than a total of 90 days during any 12-month period in which any individual, firm, partnership, corporation or other entity, shall not have a qualified licensee to operate said business; and further provided, during each of the periods specified under this section, the use of any restricted use pesticide by any person representing said business agent or agency shall be by or under the direct supervision of a person possessing a valid certified applicator's identification card. A new licensee shall be responsible for correcting all discrepancies committed by the preceding licensee of said business or anyone working under his license during the 12-month period next preceding his becoming the designated licensee and he shall further be responsible for correcting discrepancies for all existing contracts. A discrepancy shall mean failure of the licensee to follow any rule and regulation concerning treating procedures adopted by the Committee under provisions of this Article.~~ A license, certified applicator's identification card or registered technician's identification card is not transferable from one person to another. A licensee or certified applicator may change the name of his business or employer's business on his license certificate or certified applicator's identification card upon application to the Division.

(c1) When there is a transfer of ownership, management, or operation of a structural pest control business or in the event of the death or disability of a licensee there shall be not more than a total of 90 days during any 12-month period in which said business shall operate without a licensee assigned to it.

The owner, partnership, corporation, or other entity operating said business shall, within 10 days of such transfer or disability or within 30 days of death, designate in writing to the Division a certified applicator who shall be responsible for and in charge of the structural pest control operations of said business during the 90-day period. If the owner, partnership, corporation, or other entity operating the business fails to designate a certified applicator who shall be responsible for the operation of the business during the 90-day period, the business shall cease all structural pest control activities upon

expiration of the applicable notification period and shall not resume operations until a certified applicator is so designated.

During the 90-day period the use of any restricted use pesticide shall be by or under the direct supervision of the certified applicator designated in writing to the Division. The designated certified applicator shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

The new licensee shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

(d) The Committee shall by regulation provide for:

(1) Establishing categories of certified applicators, along with such appropriate subcategories as are necessary, to meet the requirements of this Article;

(2) All licensees licensed prior to October 21, 1976, to become qualified as certified applicators; and

(3) Requalifying certified applicators thereafter as required by the federal government at intervals no more frequent than that specified by federal law and federal regulations."

Sec. 4. G.S. 106-65.28 reads as rewritten:

"§ *106-65.28. Revocation or suspension of license or identification card.*

(a) Any license or certified applicator's identification card or ~~operator's~~ registered technician's identification card may be denied, revoked or suspended by a majority vote of the Committee for any one or more of the following causes:

(1) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods or materials which are not reasonably suitable for the purpose contracted.

(2) Failure of the licensee or certified applicator to give the Committee, the Commissioner, or their authorized representatives, upon request, true information regarding methods and materials used, or work performed.

(3) Failure of the licensee or ~~license holder [or]~~ certified applicator to make registrations herein required or failure to pay the registration fees.

(4) Any misrepresentation in the application for a license or certified applicator's identification card or ~~operator's~~ registered technician's identification card.

(5) Willful violation of any rule or regulation adopted pursuant to this Article.

(6) Aiding or abetting a licensed or unlicensed person or a certified applicator or a noncertified person to evade the

provisions of this Article, combining or conspiring with such a licensed or unlicensed person or a certified applicator or noncertified person to evade the provisions of this Article, or allowing one's license, ~~license or~~ certified applicator's identification card or ~~operator's~~ registered technician's identification card, ~~card~~ to be used by any person other than the individual to whom it has been issued. ~~an unlicensed or noncertified person.~~

(7) Impersonating any State, county or city inspector or official.

(8) Storing or disposing of containers or pesticides by means other than those prescribed on the label or adopted regulations.

(9) Using any ~~registered~~ pesticide in a manner inconsistent with its labeling.

(10) Payment, or the offer to pay, by any licensee to any party to a real estate transaction of any commission, bonus, rebate, or other thing of value as compensation or inducement for the referral to such licensee of structural pest control work arising out of such transaction.

(11) Falsification of records required to be kept by this Article or the rules and regulations of the Committee.

(12) Failure of a licensee or certified applicator to pay the original or renewal license or identification card fee when due and continuing to operate as a licensee or a certified applicator.

(13) Conviction of a felony or conviction of a violation of G.S. 106-65.28 within five years preceding the date of application for a license or a certified applicator's identification card or conviction of any said crimes while such license or card is in effect.

(b) Suspension of any license or certified applicator's identification card or ~~operator's~~ registered technician's identification card under the provisions of this Article shall not be for less than 10 days nor more than two years, in the discretion of the Committee.

(c) If a license or certified applicator's identification card or ~~operator's~~ registered technician's identification card is suspended or revoked under the provisions hereof, the licensee shall within five days of such suspension or revocation, surrender all licenses and identification cards issued thereunder to the Commissioner or his authorized representative.

(d) Any licensee whose license or certified applicator or operator whose identification card is revoked under the provisions of this Article shall not be eligible to apply for a new license or certified

applicator's identification card or ~~operator's~~ registered technician's identification card hereunder until two years have elapsed from the date of the order revoking said license or certified applicator's identification card or ~~operator's~~ registered technician's identification card or if an appeal is taken from said order of revocation, two years from the date of the order or final judgment sustaining said revocation.

(e) The lapsing of a State structural pest control license or certified applicator's identification card or ~~operator's~~ registered technician's identification card by operation of law or the voluntary surrender of said license or said card shall not deprive the Committee of jurisdiction to proceed with any investigation or disciplinary proceedings against such licensee or card holder or to render a decision suspending or revoking such license or card.

(f) The Committee may deny an application for a license, a certified applicator's identification card or a registered technician's identification card of any person whose license, certified applicator's identification card or equivalent thereto has been suspended or revoked in another state within two years prior to the application."

Sec. 5. G.S. 106-65.29 reads as rewritten:

"*§ 106-65.29. Rules and regulations.*

In order to ensure that persons licensed and certified under this Article are capable of performing a high quality of workmanship, the Committee is hereby authorized and empowered to make rules and regulations with respect to:

(1) The amount and kind of training required of an applicant for a license and certified applicator's card to engage in any one or more of the three phases of structural pest control, and the amount and kind of training required of an applicant for ~~an operator's~~ a registered technician's identification card.

(2) The type, frequency and passing score of any examination given an applicant for a license and certified applicator's card under this Article.

(3) The amount, kind and frequency of continuing education required of a licensee and certified applicator.

(4) The methods and materials to be used in performing any work authorized by the issuance of a license and certified applicator's card under this Article.

(5) The business records to be made and maintained by licensees and certified applicators under this Article necessary for the Committee to determine whether the licensee and certified applicator is performing a high quality of workmanship.

(6) The credentials and identification required of licensees and certified applicators, their employees and equipment, including service vehicles, when engaged in any work defined under this Article.

(7) Safety methods and procedures for structural pest control work.

(8) Fees for reinspection following a finding of a ~~discrepancy,~~ deviation, as defined by the Committee.

(9) Fees for training materials provided by the Committee or the Division. Such fees may be placed in a revolving fund to be used for training and continuing education purposes and shall not revert to the General Fund.

(10) The policies and programs set forth in this Article."

Sec. 6. G.S. 106-65.30 reads as rewritten:

"§ *106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.*

For the enforcement of the provisions of this Article the Commissioner is authorized to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this Article. The inspectors shall be known as 'structural pest control inspectors.' The Commissioner shall enforce compliance with the provisions of this Article by making or causing to be made periodical and unannounced inspections of work done by licensees and certified applicators under this Article who engage in or supervise any one or more phases of structural pest control as defined in G.S. 106-65.25. The Commissioner shall cause the prompt and diligent investigation of all reports of violations of the provisions of this Article and all rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by a representative of the Commissioner of any property without first securing the permission of the owner or occupant thereof.

Prior to the issuance or renewal of a license or certified applicator's identification card, every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Commissioner or his authorized agent a resident agent upon whom service of notice or process may be made to enforce the provisions of this Article and rules and regulations adopted pursuant to the provisions hereof or any civil or criminal liabilities arising hereunder.

The Commissioner shall have authority to appoint personnel of the Structural Pest Control Division as special inspectors and said special inspectors are hereby vested with the authority to arrest with a warrant, or to arrest without a warrant when a violation of this Article is being committed in their presence or they have reasonable grounds to believe that a violation of this Article is being committed in their

presence. Said special inspectors shall take offenders before the several courts of this State for prosecution or other proceedings. The provisions of this section do not apply to any person holding a valid structural pest control license, or a certified applicator's identification card, or ~~an operator's~~ a registered technician's identification card as issued under the provisions of this Article. Special inspectors shall not be entitled to the benefits of the Law Enforcement Officers' Benefit and Retirement Fund or the benefits of the Law Enforcement Officers' and Others Death Benefit Act as provided for in Articles 12 and 12A of Chapter 143 of the General Statutes, respectively."

Sec. 7. G.S. 106-65.31, as rewritten by Chapter 544, Session Laws of 1989, reads as rewritten:

"*§ 106-65.31. Annual certified applicator card and license fee; registration of servicemen, salesmen, solicitors, and estimators; identification cards.*

(a) Certified Applicator's Identification Card. -- The fee for issuance or renewal of a certified applicator's identification card ~~for any one phase or more of structural pest control, as the same is defined in G.S. 106-65.25,~~ shall be thirty dollars ~~($30.00).~~ ($30.00). Within 75 days after the employment of a certified applicator, the licensee shall apply to the Division for the issuance of a certified applicator's identification card. A certified ~~Certified~~ applicator's identification card ~~cards~~ shall expire on June 30 of each year and shall be renewed annually. All certified applicators who fail or neglect to renew their ~~certified applicator's identification~~ card ~~issued under the provisions of this Article~~ on or before June 30 ~~of each year in which they hold a valid certified applicator's identification card~~ but make application before January ~~October~~ 1 of the following ~~that~~ year may have their card ~~shall be~~ renewed without ~~the applicant~~ having to be reexamined unless ~~under the provisions of this Article~~ the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(e)(3). ~~(G.S. 106-65.27(d)(3)).~~ All applicants submitting applications for the renewal of their ~~certified applicator's identification~~ cards after June 30 ~~and before October 1 of that year~~ shall ~~(i~~ not use or supervise the use of ~~any~~ restricted use pesticides ~~after June 30 of that year~~ — until ~~he has been issued a valid certified applicator's identification~~ a new card has been issued. ~~and (ii) pay, in addition to the annual certification fee, the sum of ten dollars ($10.00) for each phase of structural pest control in which he is applying for certification before his certified applicator's identification card is renewed.~~

Any certified applicator whose employment is terminated with a licensee or agent prior to the end of any ~~said~~ license year may at any time prior to the end of the ~~said~~ license year be reissued a certified

applicator's identification card for the remainder of the license year as an employee of another licensee or agency or as an individual for a fee of five dollars ($5.00). The licensee shall notify the Division of the termination or change in status of any certified applicator.

Any certified applicator whose identification card is lost or destroyed or changed in any way may be reissued a new ~~secure a duplicate identification~~ card for the remainder of the license year for a fee of five dollars ($5.00).

~~The fees for a certified applicator's identification shall not apply to agents or agencies of the federal, State, or local governments.~~

(b) License. -- The fee for the issuance or renewal of a license for any one phase of structural pest control ~~control, as the same is defined in G.S. 106-65.25,~~ shall be one hundred twenty-five dollars ($125.00). ~~($125.00); provided, that when or any time after the fee for a license for any one phase is paid, the holder of said license may secure a license for either or both of the other two phases for an additional fee of~~ Each additional phase shall be fifty dollars ($50.00). The fee for each subphase shall be ten dollars ($10.00). ~~($50.00) per license phase.~~ Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees ~~Any licensee~~ who fail ~~fails~~ or neglect ~~neglects~~ to renew their ~~any~~ license ~~issued under the provisions of this Article~~ on or before ~~August 1 of each year shall pay, in addition to the annual fee, the sum of fifteen dollars ($15.00) for each phase before his license is renewed.~~ June 30, but who make application before January 1 of the following year, may have their license renewed without having to be reexamined, unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(e)(3). No structural pest control work may be performed until the license has been renewed or until a new license has been issued.

Any licensee whose employment is terminated by his employer or any licensee who is transferred to another company or location other than the company or location shown on his license certificate, may at any time, have his license reissued for the remainder of the license year for a fee of ten dollars ($10.00).

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of ten dollars ($10.00).

~~A license holder shall register with the North Carolina Department of Agriculture within 75 days of employment the names of all certified applicators, estimators, salesmen, servicemen and solicitors (not common laborers) and shall pay a registration fee of twenty-five dollars ($25.00) for each name registered, which fee shall accompany the registration. This registration fee shall not apply to a certified applicator. All registrations expire when a license expires. Each~~

~~employee of a licensee for whom registration is made and registration fee paid shall be issued an identification card which shall be carried on the person of the employee at all times when performing any phase of structural pest control work. An identification card shall be renewed annually by payment of a renewal fee of twenty-five dollars ($25.00). An identification card shall be displayed upon demand to the Commissioner, or his authorized representative, or to the person for whom any phase of structural pest control work is being performed. When an identification card is lost or destroyed, the licensee shall secure a duplicate identification card for which he shall pay a fee of one dollar ($1.00). This one dollar ($1.00) fee shall not apply to a certified applicator's identification card. The licensee shall be responsible for registering and securing identification cards for all employees who are estimators, salesmen, servicemen, and solicitors.~~

~~It shall be unlawful for an estimator, serviceman, salesman or solicitor to engage in the performance of any work covered by this Article without having first secured and having in his possession an identification card. It shall be unlawful for a licensee to direct or procure any salesman, serviceman or estimator to engage in the performance of any work covered by this Article without having first applied for an identification card for such employee or agent; provided, however, that the licensee shall have 75 days after employing a serviceman, salesman or estimator within which to apply for an identification card.~~

~~All registrations and applications for licenses and identification cards shall be filed with the North Carolina Department of Agriculture.~~

(b1) Registration. Within 75 days after the hiring of an employee who is either an estimator, salesman, serviceman, or solicitor, the licensee shall apply to the Division for the issuance of an identification card for such employee. The application must be accompanied by a fee of twenty-five dollars ($25.00) for each card. The card shall be issued in the name of the employee and shall bear the name of the employing licensee, the employer's license number and phases, the name and address of the employer's business, and such other information as the Committee may specify. The identification card shall be carried by the employee on his person at all times while performing any phase of structural pest control work. The card must be displayed upon demand by the Commissioner, the Committee, the Division, or any representative thereof, or the person for whom any phase of structural pest control work is being performed. A registered technician's identification card must be renewed annually on or before June 30 by payment of a renewal fee of twenty-five dollars ($25.00). If a card is lost or destroyed the licensee may secure a duplicate for a

fee of five dollars ($5.00). The licensee shall notify the Division of the termination or change in status of any registered technician. All identification cards expire when a license expires.

When a license is reissued, the licensee shall be responsible for registering and securing identification cards for all existing employees who engage in structural pest control within 10 days of the reissuance of the license.

A certified applicator who is not an employee of a licensed individual shall register the names of all employees under his supervision who are engaged in the performance of structural pest control with the Division and shall purchase a registered technician's identification card for each such employee.

(b2) No person shall act as an estimator, serviceman, salesman, solicitor, or agent for any licensee under this Article nor shall any such person be issued an identification card by the ~~Structural Pest Control~~ Committee who has within three years of the date of application for an identification card been convicted of, plead guilty or nolo contendere, or forfeited bond in any ~~court~~ State or federal court for a felony ~~federal, to a crime involving moral turpitude~~ or ~~to~~ any violation of the North Carolina Structural Pest Control Act or ~~to~~ any regulation promulgated by the ~~Structural Pest Control~~ Committee. This provision shall not apply to any person whose citizenship has been restored as provided by law.

(b3) No person or business shall advertise as a contractor for structural pest control services nor actually contract for such services unless that person or business advertises or contracts in the name of the company shown on the license certificate of the licensee or identification card of the certified applicator who will perform the services.

(c) Notwithstanding any other provision of this law, the Committee may adopt rules to provide for the issuance of licenses, certified applicator's cards, and ~~operator's~~ registered technician's identification cards with staggered expiration dates and may prorate renewal fees on a monthly basis to implement such rules."

Sec. 8. G.S. 106-65.41 reads as rewritten:

"§ *106-65.41. Civil penalties.*

A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Committee against any person for any one or more of the causes set forth in G.S. 106-65.28(a)(1) through (12). ~~(11).~~ In determining the amount of any penalty, the Committee shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given an opportunity for a hearing pursuant to Chapter 150B of the General Statutes. Assessments may be collected, following judicial

review, if any, of the Committee's final decision imposing the assessment, in any lawful manner for the collection of a debt."

Sec. 9. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

H.B. 1103 **CHAPTER 726**

AN ACT TO ALLOW COUNTY WATER AND SEWER DISTRICTS TO PROVIDE SERVICES OUTSIDE THEIR BOUNDARIES.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"*§ 162A-87.3. Services outside the district.*

(a) A county water and sewer district may provide water or sewer services, or both, to customers outside the district, but in no case shall the county water and sewer district be held liable for damages to those outside the district for failure to furnish such services.

(b) A county water and sewer district may provide a different schedule of rents, rates, fees, and charges for services provided outside the district.

(c) A county water and sewer district may not extend service to customers lying within the corporate limits of a city or sanitary district unless the governing body of a city or sanitary district agrees, by resolution, to the extension.

(c) A county water and sewer district may not extend service to customers lying within another county unless the board of commissioners of that county agrees, by resolution, to the extension."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

H.B. 480 **CHAPTER 727**

AN ACT TO CREATE THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES AND TO PROVIDE FOR ITS ORGANIZATION, TO CONSOLIDATE ENVIRONMENTAL PROGRAMS, TO ABOLISH THE DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT AND TRANSFER THE DIVISIONS, AGENCIES, POWERS, DUTIES, AND FUNCTIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT, TO

PROVIDE FOR FURTHER STUDY OF ENVIRONMENTAL AGENCY CONSOLIDATION AND REORGANIZATION, TO AMEND VARIOUS RELATED LAWS, AND TO MAKE TECHNICAL AND CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by deleting the existing title and substituting *"Department of Environment, Health, and Natural Resources"*.

Sec. 2. G.S. 143B-275 through G.S. 143B-281 are repealed.

Sec. 3. Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding the following new sections:

"§ 143B-279.1. Department of Environment, Health, and Natural Resources--creation.

(a) There is hereby created and constituted a department to be known as the Department of Environment, Health, and Natural Resources, with the organization, powers, and duties defined in this Article and other applicable provisions of law.

(b) The provisions of Article 1 of this Chapter not inconsistent with this Article shall apply to the Department of Environment, Health, and Natural Resources.

"§ 143B-279.2. Department of Environment, Health, and Natural Resources--duties.

It shall be the duty of the Department:

(1) To provide for the protection of the environment;

(2) To provide for the protection and enhancement of the public health; and

(3) To provide for the management of the State's natural resources.

"§ 143B-279.3. Department of Environment, Health, and Natural Resources--structure.

(a) All functions, powers, duties, and obligations heretofore vested in the following commissions, boards, councils, committees, and subunits of the following departments are hereby transferred to and vested in the Department of Environment, Health, and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

(1) Governor's Waste Management Board, Department of Human Resources.

(2) Radiation Protection Section, Division of Facility Services, Department of Human Resources.

(3) Radiation Protection Commission, Department of Human Resources.

(4) Division of Health Services, Department of Human Resources.

(5) State Center for Health Statistics, Department of Human Resources.

(6) Commission for Health Services, Department of Human Resources.

(7) Water Treatment Facility Operators Board of Certification, Department of Human Resources.

(8) Council on Sickle Cell Syndrome, Department of Human Resources.

(9) Perinatal Health Care Programs Advisory Council, Department of Human Resources.

(10) Governor's Council on Physical Fitness and Health, Department of Human Resources.

(11) Commission of Anatomy, Department of Human Resources.

(12) Coastal Management Division, Department of Natural Resources and Community Development.

(13) Coastal Resources Commission, Department of Natural Resources and Community Development.

(14) Environmental Management Division, Department of Natural Resources and Community Development.

(15) Environmental Management Commission, Department of Natural Resources and Community Development.

(16) Air Quality Council, Department of Natural Resources and Community Development.

(17) Wastewater Treatment Plant Operators Certification Commission, Department of Natural Resources and Community Development.

(18) Forest Resources Division, Department of Natural Resources and Community Development.

(19) Forestry Council, Department of Natural Resources and Community Development.

(20) Land Resources Division, Department of Natural Resources and Community Development.

(21) North Carolina Mining Commission, Department of Natural Resources and Community Development.

(22) Advisory Committee on Land Records, Department of Natural Resources and Community Development.

(23) Marine Fisheries Division, Department of Natural Resources and Community Development.

(24) Marine Fisheries Commission, Department of Natural Resources and Community Development.

(25) Parks and Recreation Division, Department of Natural Resources and Community Development.

(26) Parks and Recreation Council, Department of Natural Resources and Community Development.

(27) Board of Trustees of the Recreation and Natural Trust Fund, Department of Natural Resources and Community Development.

(28) North Carolina Trails Committee, Department of Natural Resources and Community Development.

(29) Soil and Water Conservation Division, Department of Natural Resources and Community Development.

(30) Sedimentation Control Commission, Department of Natural Resources and Community Development.

(31) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.

(32) Water Resources Division, Department of Natural Resources and Community Development.

(33) North Carolina Zoological Park, Department of Natural Resources and Community Development.

(34) North Carolina Zoological Park Council, Department of Natural Resources and Community Development.

(35) Albemarle-Pamlico Study.

(b) (1) There is hereby created a division within the environmental area of the Department of Environment, Health, and Natural Resources to be named the Radiation Protection Division. All functions, powers, duties, and obligations of the Radiation Protection Section of the Division of Facility Services of the Department of Human Resources are transferred in their entirety to the Radiation Protection Division of the Department of Environment, Health, and Natural Resources.

(2) There is hereby created a division within the environmental area of the Department of Environment, Health, and Natural Resources to be named the Solid Waste Management Division. All functions, powers, duties, and obligations of the Solid Waste Management Section of the Division of Health Services of the Department of Human Resources are transferred in their entirety to the Solid Waste Management Division of the Department of Environment, Health, and Natural Resources.

(c) The Department of Environment, Health, and Natural Resources is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State.

"*§ 143B-279.4. The Department of Environment, Health, and Natural Resources--Secretary; Deputy Secretaries.*

(a) The Secretary of the Department of Environment, Health, and Natural Resources shall be the head of the Department.

(b) The Secretary may appoint two Deputy Secretaries.

"*§ 143B-279.5. Biennial State of the Environment Report.*

The Secretary of the Department of Environment, Health, and Natural Resources shall report on the state of the environment to the General Assembly and the Environmental Review Commission no later than 1 January of each odd-numbered year beginning 1 January 1991. The report shall include:

(1) An identification and analysis of current environmental protection issues and problems within or affecting the State and its people;

(2) Trends in the quality and use of North Carolina's air and water resources;

(3) An inventory of areas of the State where air or water pollution is in evidence or may occur during the upcoming biennium;

(4) Current efforts and resources allocated by the Department to correct identified pollution problems and an estimate, if necessary, of additional resources needed to study, identify, and implement solutions to solve potential problems;

(5) Departmental goals and strategies to protect the natural resources of the State;

(6) Any information requested by the General Assembly or the Environmental Review Commission;

(7) Suggested legislation, if necessary; and

(8) Any other information on the state of the environment the Secretary considers appropriate.

Other State agencies involved in protecting the State's natural resources and environment shall cooperate with the Department of Environment, Health, and Natural Resources in preparing this report."

Sec. 4. Part 3 of Article 7 of Chapter 143B of the General Statutes is amended by adding the following new section:

"*§ 143B-279.6. Wildlife Resources Commission--transfer; independence preserved; appointment of Executive Director and employees.*

The Wildlife Resources Commission, as established by Chapters 75A, 113, and 143 of the General Statutes and other applicable laws of this State, is hereby transferred to the Department of Environment, Health, and Natural Resources by a Type II transfer as defined in G.S. 143A-6. The Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of

Environment, Health, and Natural Resources and, other provisions of this Chapter notwithstanding, shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting. Any other provisions of this Chapter to the contrary notwithstanding, the Executive Director of the Wildlife Resources Commission shall be appointed by the Commission and the employees of the Commission shall be employed as now provided in G.S. 143-246."

Sec. 5. G.S. 143B-138 reads as rewritten:

"§ *143B-138. Department of Human Resources -- ~~functions.~~ functions and organization.*

~~(a) The functions of the Department of Human Resources shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all executive functions of the State in relation to general and mental health and health rehabilitation and further including those prescribed powers, duties, and functions enumerated in Article 13 of Chapter 143A of the General Statutes of this State.~~

(b) ~~All such functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 13 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Human Resources, except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:~~

~~(1) The State Board of Health,~~
~~(2) The Salt Marsh Mosquito Advisory Commission,~~
~~(3) The Office of Chief Medical Examiner,~~
~~(4) The State Department of Social Services,~~
~~(5) The State Board of Social Services,~~
~~(6) The Advisory Committee for Medical Assistance,~~
~~(7) The State Department of Mental Health,~~
~~(8) The State Board of Mental Health,~~
~~(9) The Medical Advisory Council to the State Board of Mental Health,~~
~~(10) The Mental Health Council,~~
~~(11) The Advisory Council on Alcoholism to the North Carolina Board of Mental Health,~~
~~(12) The State Advisory Council to the North Carolina Medical Care Commission,~~
~~(13) The North Carolina State Commission for the Blind,~~
~~(14) The Blind Advisory Committee, Professional Advisory Committee,~~
~~(15) The Vocational Rehabilitation Division,~~
~~(16) The Eugenics Board of North Carolina,~~

~~(17) The Governor Morehead School,~~
~~(18) The North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf,~~
~~(19) The North Carolina Orthopedic Hospital,~~
~~(20) The North Carolina Cerebral Palsy Hospital,~~
~~(21) The North Carolina Sanatoriums for the Treatment of Tuberculosis,~~
~~(22) The Interstate Compact on Mental Health,~~
~~(23) The Council on Mental Retardation and Developmental Disabilities,~~
~~(24) The North Carolina Cancer Study Commission,~~
~~(25) The Interstate Compact on Juveniles,~~
~~(26) The North Carolina Board of Anatomy,~~
~~(27) The Governor's Coordinating Council on Aging,~~
~~(28) The Confederate Women's Home,~~
~~(29) The Medical Care Commission,~~
~~(30) The Governor's Committee on Employment of the Handicapped, and~~
~~(31) The Human Resources Division.~~

All functions, powers, duties, and obligations heretofore vested in commissions, boards, councils, committees, or subunits of the Department of Human Resources which are not transferred by G.S. 143B-279.3 shall continue to be vested in the Department of Human Resources. These shall include, but are not limited to, the following:

(1) Division of Aging.
(2) Respite Care Program.
(3) Governor's Advisory Council on Aging.
(4) Division of Services for the Blind.
(5) Commission for the Blind.
(6) Professional Advisory Committee.
(7) Consumer and Advocacy Advisory Committee for the Blind.
(8) Division of Medical Assistance.
(9) Division of Mental Health, Mental Retardation, and Substance Abuse Services.
(10) Commission for Mental Health, Mental Retardation, and Substance Abuse Services.
(11) Division of Social Services.
(12) Social Services Commission.
(13) Division of Facility Services.
(14) Medical Care Commission.
(15) Child Day-Care Commission.
(16) Emergency Medical Services Advisory Council.
(17) Division of Vocational Rehabilitation.
(18) Division of Youth Services.

(19) Division of Schools for the Deaf and the Blind.
(20) Board of Directors of the Governor Morehead School.
(21) Board of Directors for the North Carolina Schools for the Deaf.
(22) North Carolina Council for the Hearing Impaired.
(23) Council on Developmental Disabilities.
(24) North Carolina Council on the Holocaust.

(c) All functions, powers, duties, and obligations heretofore vested in the Economic Opportunity Division of the Department of Natural Resources and Community Development are hereby transferred to and vested in the Department of Human Resources by a Type I transfer as defined in G.S. 143A-6.

(d) The Department of Human Resources is vested with all other functions, powers, duties, and obligations as are conferred by the Constitution and laws of this State."

Sec. 6. G.S. 143B-430 reads as rewritten:

"§ *143B-430. Secretary of Commerce -- powers and duties.*

(a) The head of the Department of Commerce is the Secretary of Commerce. The Secretary of Commerce shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. The Secretary of Commerce shall be responsible for effectively and efficiently organizing the Department of Commerce to promote the policy of the State of North Carolina as outlined in G.S. 143B-428 and to promote statewide economic development in accord with that policy. Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the functions, powers, duties and obligations of every agency or subunit in the Department of Commerce shall be prescribed by the Secretary of Commerce.

(b) The Secretary of Commerce shall have the power and duty to accept and administer federal funds provided to the State through the Job Training Partnership Act, Pub. L. No. 97-300, 96 Stat. 1322, 29 U.S.C. § 1501 **et seq.**, as amended."

Sec. 7. G.S. 143B-432 reads as rewritten:

"§ *143B-432. Transfers to Department of Commerce.*

(a) The Division of Economic Development of the Department of Natural and Economic Resources, the Science and Technology Committee of the Department of Natural and Economic Resources, the Science and Technology Research Center of the Department of Natural and Economic Resources, and the North Carolina National Park, Parkway and Forests Development Council of the Department of Natural and Economic Resources are each hereby transferred to the Department of Commerce by a Type I transfer, as defined in G.S. 143A-6.

(b) All functions, powers, duties, and obligations heretofore vested in the following commissions, boards, councils, committees, or subunits of the Department of Natural Resources and Community Development are hereby transferred to and vested in the Department of Commerce by a Type I transfer as defined in G.S. 143A-6:

(1) Community Assistance Division.
(2) Community Development Council.
(3) Employment and Training Division.
(4) Job Training Coordinating Council."

Sec. 8. G.S. 143B-433 reads as rewritten:

"§ *143B-433. Department of Commerce -- organization.*

The Department of Commerce shall be organized to include:

(a) (1) The North Carolina Alcoholic Beverage Control Commission.
(2) The North Carolina Utilities Commission.
(3) The Employment Security Commission.
(4) The North Carolina Industrial Commission.
(5) State Banking Commission.
(6) Savings and Loan Association Division.
(7) The State Savings Institutions Commission.
(8) Credit Union Commission.
(9) The North Carolina Milk Commission.
(10) The North Carolina Mutual Burial Association Commission.
(11) North Carolina Cemetery Commission.
(12) The North Carolina Rural Electrification Authority.
(13) Repealed by Session Laws 1985, c. 757, s. 179(d), effective July 15, 1985.
(14) North Carolina Science and Technology Research Center.
(15) The North Carolina State Ports Authority.
(16) North Carolina National Park, Parkway and Forests Development Council.
(17) Economic Development Board.
(18) Labor Force Development Council.
(19) Energy Policy Council.
(20) Energy Division.
(21) Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes.
(22) The North Carolina Technological Development ~~Authority.~~ Authority.

(b) Those agencies which are transferred to the Department of Commerce, including the:

(1) Community Assistance Division.

(2) Community Development Council,
(3) Employment and Training Division, and
(4) Job Training Coordinating Council; and ~~such~~

(c) Such divisions as may be established pursuant to Article 1 of this Chapter."

Sec. 9. G.S. 20-128(c) reads as rewritten:

"(c) No motor vehicle registered in this State which was manufactured after model year 1967 shall be operated in this State unless it is equipped with such emission-control devices to reduce air pollution as were installed at the time of manufacture, provided the foregoing requirement shall not apply where such devices have been removed for the purpose of converting the motor vehicle to operate on natural or liquefied petroleum gas or other modifications have been made in order to reduce air pollution, further provided that such modifications shall have first been approved by the Department of ~~Water and Air Resources [Department of Natural Resources and Community Development]~~ Environment, Health, and Natural Resources."

Sec. 10. G.S. 20-183.3(a) reads as rewritten:

"(a) Before an approval certificate may be issued for a motor vehicle, the vehicle must be inspected by a safety equipment inspection station, and if required by Chapter 20 of the General Statutes of North Carolina, must be found to possess in safe operating condition the following articles and equipment:

(1) Brakes,
(2) Lights,
(3) Horn,
(4) Steering mechanism,
(5) Windshield wiper,
(6) Directional signals,
(7) Tires,
(8) Rearview mirror or mirrors.

No inspection certificate shall be issued by a safety equipment inspection station for a motor vehicle manufactured after model year 1967 unless the vehicle is equipped with such emission control devices to reduce air pollution as were installed at the time of manufacture which are readily visible, provided the foregoing requirements shall not apply where such devices have been removed for the purpose of converting the motor vehicle to operate on natural or liquified petroleum gas or other modifications have been made in order to reduce air pollution, further provided that such modifications shall have first been approved by the Department of ~~Water and Air Resources [Department of Natural Resources and Community Development]~~ Environment, Health, and Natural Resources.

In addition to the items listed above, safety inspection equipment stations shall inspect the exhaust systems of all vehicles inspected and report the condition of each exhaust system to the owners or to the persons offering the vehicles for inspection.

The inspection requirements herein provided for shall not exceed the standards provided in the current General Statutes for such equipment."

Sec. 11. G.S. 74-51 reads as rewritten:

"*§ 74-51. Permits -- Application, granting, conditions.*

Any operator desiring to engage in mining shall make written application to the Department for a permit. Such application shall be upon a form furnished by the Department and shall fully state the information called for; in addition, the applicant may be required to furnish such other information as may be deemed necessary by the Department in order adequately to enforce this Article.

The application shall be accompanied by a reclamation plan which meets the requirements of G.S. 74-53. No permit shall be issued until such plan has been approved by the Department.

The application shall be accompanied by a signed agreement, in a form specified by the Department, that in the event a bond forfeiture is ordered pursuant to G.S. 74-59, the Department and its representatives and its contractors shall have the right to make whatever entries on the land and to take whatever actions may be necessary in order to carry out reclamation which the operator has failed to complete.

Before deciding whether to grant a new permit, the Department shall circulate copies of a notice of application for review and comment as it deems advisable. The Department shall grant or deny the permit requested as expeditiously as possible, but in no event later than 60 days after the application form and any relevant and material supplemental information reasonably required shall have been filed with the Department, or if a public hearing is held, within 30 days following the hearing and the filing of any relevant and material supplemental information reasonably required by the Department. Priority consideration shall be given to applicants who submit evidence that the mining proposed will be for the purpose of supplying materials to the Board of Transportation.

Upon its determination that significant public interest exists, the Department shall conduct a public hearing on any application for a new mining permit. Such hearing shall be held before the Department reaches a final decision on the application, and in making its determination, the Department shall give full consideration to all comments submitted at the public hearing. Such public hearing shall be held within 60 days of the filing of the application.

The Department may deny such permit upon finding:

(1) That any requirement of this Article or any rule promulgated hereunder will be violated by the proposed operation;

(2) That the operation will have unduly adverse effects on wildlife or fresh water, estuarine, or marine fisheries;

(3) That the operation will violate standards of air quality, surface water quality, or groundwater quality which have been promulgated by the Department ~~of Natural Resources and Community Development~~;

(4) That the operation will constitute a substantial physical hazard to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road or other public property;

(5) That the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area;

(6) That previous experience with similar operations indicates a substantial possibility that the operation will result in substantial deposits of sediment in stream beds or lakes, landslides, or acid water pollution; or

(7) That the operator has not corrected all violations which he may have committed under any prior permit and which resulted in,

a. Revocation of his permit,

b. Forfeiture of part or all of his bond or other security,

c. Conviction of a misdemeanor under G.S. 74-64, or

d. Any other court order issued under G.S. 74-64.

In the absence of any such findings, a permit shall be granted.

Any permit issued shall be expressly conditioned upon compliance with all requirements of the approved reclamation plan for the operation and with such further reasonable and appropriate requirements and safeguards as may be deemed necessary by the Department to assure that the operation will comply fully with the requirements and objectives of this Article. Such conditions may, among others, include a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas, where the Department finds such screening to be feasible and desirable. Violation of any such conditions shall be treated as a violation of this Article and shall constitute a basis for suspension or revocation of the permit.

Any operator wishing any modification of the terms and conditions of his permit or of the approved reclamation plan shall submit a request for modification in accordance with the provisions of G.S. 74-52.

If the Department denies an application for a permit, it shall notify the operator in writing, stating the reasons for its denial and any modifications in the application which would make it acceptable. The operator may thereupon modify his application or file an appeal, as provided in G.S. 74-61, but no such appeal shall be taken more than 60 days after notice of disapproval has been mailed to him at the address shown on his application.

Upon approval of an application, the Department shall set the amount of the performance bond or other security which is to be required pursuant to G.S. 74-54. The operator shall have 60 days following the mailing of such notification in which to deposit the required bond or security with the Department. The operating permit shall not be issued until receipt of this deposit.

When one operator succeeds to the interest of another in any uncompleted mining operation, by virtue of a sale, lease, assignment, or otherwise, the Department may release the first operator from the duties imposed upon him by this Article with reference to such operation and transfer the permit to the successor operator; provided, that both operators have complied with the requirements of this Article and that the successor operator assumes the duties of the first operator with reference to reclamation of the land and posts a suitable bond or other security."

Sec. 12. G.S. 74-78(a) reads as rewritten:

"(a) A person desiring to engage in exploration activities for discovery of uranium shall make written application to the Department for an exploration permit. An application shall be upon a form furnished by the Department and shall fully state the information called for. In addition, the applicant may be required to furnish any other information the Department deems necessary in order to enforce this Article.

The application shall be accompanied by a signed agreement, in form specified by the Department, that in the event a bond or other security forfeiture is ordered pursuant to G.S. 74-81, the Department and its representatives and contractors may make any necessary entries on the land and take any necessary action to carry out abandonment procedures not completed by the permit holder.

The Department shall also notify the Radiation Protection Commission ~~of the Department of Human Resources~~ of the application and request its views and comments on the application.

The applicant shall make a reasonable effort, satisfactory to the Department, to notify all owners of record of land adjoining the proposed site and the chief administrative officer of the county or municipality in which the proposed site is located that he intends to explore for uranium on the site."

Sec. 13. G.S. 76-40(e) reads as rewritten:

"(e) The provisions of this section, in the coastal waters of this State, shall be enforced by the Department of Natural Resources and Community Development. In the inland waters of the State, the provisions of this section shall be enforced by the Wildlife Resources Commission. The Department of Natural Resources and Community Development and the Wildlife Resources Commission shall cooperate ~~with the Department of Water and Air Resources~~ in the enforcement of this section."

Sec. 14. G.S. 87-88(j) reads as rewritten:

"(j) Use of Well for Recharge or Disposal. -- No well shall be used for recharge, injection or disposal purposes without prior permission from the Environmental Management Commission ~~after consultation with and recommendation by the Department of Human Resources~~."

Sec. 15. G.S. 87-91(b) reads as rewritten:

"(b) Such notice shall be served on the person by sending the same to such person by registered or certified mail to his last known post-office address or by personal service by an agent or employee of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources, and may be accompanied by an order of the Environmental Management Commission requiring described remedial action, which if taken within the time specified in such order, will effect compliance with the requirements of this Article and the rules ~~and regulations~~ issued hereunder. Such order shall become final unless a request for a hearing as hereinafter provided is made within 30 days from the date of service of such order. In addition to, or in lieu of such order, the Environmental Management Commission may appoint a time and place for such person to be heard. Notice by the Environmental Management Commission or Department may be given to any person upon whom a summons may be served in accordance with the provisions of law governing civil actions in the superior courts of this State. The Environmental Management Commission may prescribe the form and content of any particular notice."

Sec. 16. G.S. 87-95 reads as rewritten:

"*§ 87-95. Injunctive relief.*

Upon violation of any of the provisions of or any order issued pursuant to this Article, or duly adopted ~~regulation~~ rule of the Commission implementing the provisions of this Article, the Secretary of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources may, either before or after the institution of proceedings for the collection of the penalty imposed by this Article for such violations, request the Attorney General to institute a civil action in the superior court in the name of

the State upon the relation of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article for any violation of same."

Sec. 17. G.S. 87-96 reads as rewritten:

"*§ 87-96. Conflict with other laws.*

~~The provisions of any law, or regulation of the State or any municipality establishing standards affording greater protection to the public welfare, safety, health and groundwater resources shall prevail within the jurisdiction of such agency or municipality over the provisions of this Article and regulations adopted hereunder.~~ The provisions of any law, rule, or local ordinance which establish standards affording greater protection to groundwater resources or public health, safety, or welfare shall prevail, within the jurisdiction to which they apply, over the provisions of this Article and rules adopted pursuant to this Article.

~~This Article or any rules or regulations adopted pursuant thereto, shall not be in conflict with any laws, rules, or regulations of the Commission for Health Services pertaining to public health, wells and groundwater supplies. All laws, rules, and regulations presently in effect that are administered by the Department of Human Resources shall remain in effect.~~ Rules relating to public health, wells, or groundwater adopted by the Commission for Health Services shall prevail over this Article or rules adopted pursuant to this Article. This Article shall not be construed to repeal any law or rule in effect as of the effective date of this Article."

Sec. 18. G.S. 90A-25(c) reads as rewritten:

"(c) Certificates in an appropriate grade will be issued to operators who, on July 1, 1969, hold certificates of competency issued under the voluntary certification program now being administered through the ~~Division of Sanitary Engineering of the Department of Human Resources~~ Department of Environment, Health, and Natural Resources with the cooperation of the North Carolina Water Works Operators Association, the North Carolina Section of the American Water Works Association, and the North Carolina League of Municipalities."

Sec. 19. Section 2 of Chapter 372 of the 1989 Session Laws is rewritten to read:

"Sec. 2. G.S. 90A-37 reads as rewritten:

'§ *90A-37. Classification of wastewater treatment ~~facilities.~~ facilities and sanitary sewage systems.*

The Wastewater Treatment Plant Operators Certification Commission, with the advice and assistance of the Secretary of Environment, Health, and Natural Resources, shall classify all wastewater treatment facilities under the jurisdiction of the ~~North Carolina~~ Environmental Management Commission, as provided in G.S. 143-215.1, sanitary sewage systems under the jurisdiction of the Commission for Health Services, and those operated by institutions and agencies of the State of North Carolina. In making the classification, the Wastewater Treatment Plant Operators Certification Commission shall give due regard, among other factors, to the size of the ~~facility,~~ facility or system, the nature of the wastes to be treated or removed from the wastewater, the treatment process to be employed, and the degrees of skill, knowledge and experience that the operator of the wastewater treatment facility or person who installs or operates sanitary sewage systems must have to install or supervise the operation of the facility or system so as to adequately protect the public health and maintain the water quality standards in the receiving waters as assigned by the ~~North Carolina~~ Environmental Management Commission.'"

Sec. 20. Section 3 of Chapter 372 of the 1989 Session Laws is rewritten to read:

"Sec. 3. G.S. 90A-38 reads as rewritten:

'§ *90A-38. Grades of certificates.*

(a) The Wastewater Treatment Plant Operators Certification Commission, with the advice and assistance of the Secretary of Environment, Health, and Natural Resources, shall establish grades of certification for wastewater treatment plant operators and persons who install or operate sanitary sewage systems corresponding to the classification of wastewater treatment ~~facilities.~~ facilities and sanitary sewage systems. The grades of certification shall be ranked so that a person holding a certification in the highest grade is thereby affirmed competent to operate wastewater treatment facilities or sanitary sewage systems in the highest classification and any treatment facility or system in a lower classification; a person holding a certification in the next highest grade is affirmed as competent to operate wastewater treatment facilities or systems in the next-to-the-highest classification and any lower classification; and in a like manner through the range of grades of certification and classification of wastewater treatment ~~facilities.~~ facilities and sanitary sewage systems.

(b) No certificate shall be required under this Article to install or operate a conventional septic tank system. For purposes of this section, 'conventional septic tank system' means a subsurface sanitary

sewage system consisting of a settling tank and a subsurface disposal field without a pump or other appurtenances.'"

Sec. 21. Section 4 of Chapter 372 of the 1989 Session Laws is rewritten to read:

"Sec. 4. G.S. 90A-39 reads as rewritten:

'§ *90A-39.* ~~*Operator qualifications*~~ *Qualifications and examination.*

The Wastewater Treatment Plant Operators Certification Commission, with the advice and assistance of the Secretary of Environment, Health, and Natural Resources, shall establish minimum requirements of education, experience and knowledge for each grade of certification for wastewater treatment plant operators, and persons who install or operate sanitary sewage systems and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate to the end that prompt and fair consideration be given every application and the wastewater treatment facilities and sanitary sewage systems within the State may be adequately supervised by certified operators.'"

Sec. 22. Section 8 of Chapter 372 of the 1989 Session Laws is rewritten to read:

"Sec. 8. G.S. 90A-43 reads as rewritten:

'§ *90A-43. Promotion of training and other powers.*

The Wastewater Treatment Plant Operators Certification Commission and the Secretary of Environment, Health, and Natural Resources are authorized to take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this Article, including, but not limited to, the providing of training for operators of wastewater treatment facilities or persons who install or operate sanitary sewage systems, and cooperating with educational institutions and private and public ~~asssociations,~~ associations, persons, or corporations in the promotion of training for wastewater treatment and sanitary sewage personnel.'"

Sec. 23. G.S. 90A-55(a) reads as rewritten:

"(a) Board Membership. -- The Board shall consist of nine members: the Secretary of ~~Human Resources,~~ Environment, Health, and Natural Resources or his duly authorized ~~representative;~~ representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the ~~Environmental Health Section, North Carolina Division of Health Services;~~ Environmental Health Division of the Department of Environment, Health, and Natural Resources, and four practicing sanitarians who qualify by education and experience for registration under this Article, three of whom will represent the Western, Piedmont, and Eastern Regions of the State as

described more specifically in the rules ~~and regulations~~ adopted by the Board."

Sec. 24. G.S. 95-149 reads as rewritten:

"*§ 95-149. Authority to enter into contracts with other State agencies and subdivisions of government.*

The Commissioner is authorized and empowered to enter into contracts with the Department of ~~Public Health~~ Environment, Health, and Natural Resources or any other State officer or State agency or State instrumentality, or any municipality, county, or other political subdivision of the State, for the enforcement, administration, and any other application of the provisions of this Article."

Sec. 25. G.S. 100-13 reads as rewritten:

"*§ 100-13. Fees for use of improvements; fees for other privileges; leases; ~~rules and regulations.~~ rules.*

The Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources is further authorized ~~and empowered~~ to charge and collect fees for the use of such improvements as have already been constructed, or may hereafter be constructed, on the park, and for other privileges connected with the full use of the park by the public; to lease sites for camps, houses, hotels, and places of amusement and business; and to make and enforce such necessary rules ~~and regulations~~ as may best tend to protect, preserve and increase the value and attractiveness of the park."

Sec. 26. G.S. 100-14 reads as rewritten:

"*§ 100-14. Use of fees and other collections.*

All fees and other money collected and received by the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources in connection with its proper administration of ~~Mount Mitchell State Park~~ the North Carolina State Parks System shall be used by said Department ~~of Natural Resources and Community Development~~ for the administration, protection, improvement, and maintenance of ~~said park.~~ the State Parks System."

Sec. 27. G.S. 100-15 reads as rewritten:

"*§ 100-15. Annual reports.*

The Department ~~of Natural Resources and Community Development~~ shall make an annual report to the Governor of all money received and expended by it in the administration of ~~Mount Mitchell State Park,~~ the North Carolina State Parks System, and of such other items as may be called for by him or by the General Assembly."

Sec. 28. G.S. 105-275(6) reads as rewritten:

"(6) Special nuclear materials held for or in the process of manufacture, processing, or delivery by the manufacturer or processor thereof, regardless whether the manufacturer or processor owns the

special nuclear materials. The terms 'manufacture' and 'processing' do not include the use of special nuclear materials as fuel. The term 'special nuclear materials' includes (i) uranium 233, uranium enriched in the isotope 233 or in the isotope 235; and (ii) any material artificially enriched by any of the foregoing, but not including source material. 'Source material' means any material except special nuclear material which contains by weight one twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Provided however, that to qualify for this exemption no such nuclear materials shall be discharged into any river, creek or stream in North Carolina. The classification and exclusion provided for herein shall be denied to any manufacturer, fabricator or processor who permits burial of such material in North Carolina or who permits the discharge of such nuclear materials into the air or into any river, creek or stream in North Carolina if such discharge would contravene in any way the applicable health and safety standards established and enforced by the Department of ~~Human Resources, the North Carolina Department of Natural Resources and Community Development,~~ Environment, Health, and Natural Resources or the ~~Federal Atomic Energy~~ Nuclear Regulatory Commission. The most stringent of these standards shall govern."

Sec. 29. G.S. 105-275(8) as amended by Section 4 of Chapter 148 of the 1989 Session Laws reads as rewritten:

"(8) a. Real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water (including, but not limited to, waste lagoons and facilities owned by public or private utilities built and installed primarily for the purpose of providing sewer service to areas that are predominantly residential in character or areas that lie outside territory already having sewer service), if the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources or a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 furnishes a certificate to the tax supervisor of the county in which the property is situated or to be situated stating that the Environmental Management Commission or local air pollution control program has found that the described property:

1. Has been or will be constructed or installed:

2. Complies with or that plans therefor which have been submitted to the Environmental Management Commission or local air pollution control program indicate that it will comply with the requirements of the Environmental Management Commission or local air pollution control program;
3. Is being effectively operated or will, when completed, be required to operate in accordance with the terms and conditions of the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program; and
4. Has or, when completed, will have as its primary rather than incidental purpose the reduction of water pollution resulting from the discharge of sewage and waste or the reduction of air pollution resulting from the emission of air contaminants.

b. Real or personal property that is used or, if under construction, is to be used exclusively for recycling or resource recovering of or from solid waste, if the Department of ~~Human Resources~~ Environment, Health, and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of ~~Human Resources~~ Environment, Health, and Natural Resources has found that the described property has been or will be constructed or installed, complies or will comply with the ~~regulations~~ rules of the Department of ~~Human Resources~~ Environment, Health, and Natural Resources and has, or will have as its primary purpose recycling or resource recovering of or from solid waste.

c. Tangible personal property that is used exclusively, or if being installed, is to be used exclusively, for the prevention or reduction of cotton dust inside a textile plant for the protection of the health of the employees of the plant, in accordance with occupational safety and health standards adopted by the State of North Carolina pursuant to Article 16 of G.S. Chapter 95. The Department of Revenue shall adopt guidelines to assist the tax supervisors in administering this exclusion."

Sec. 30. G.S. 105A-2(1)m. reads as rewritten:

"m. The Division of Forest Resources of the Department of ~~Natural Resources and Community Development;~~ Environment, Health, and Natural Resources;".

Sec. 31. G.S. 110-92 reads as rewritten:

"*§ 110-92. Duties of State and local agencies.*

When requested by an operator of a day-care facility or by the Secretary of Human Resources, it shall be the duty of local and district health departments to visit and inspect a day-care facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum health and sanitation standards adopted as rules the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the ~~Department on forms approved and provided by the Department~~ Department of Human Resources on forms approved and provided by the Department of Environment, Health, and Natural Resources.

When requested by an operator of a day-care facility or by the Secretary, it shall be the duty of the local and district health departments, and any building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Secretary of Human Resources on forms provided by the Department so that such reports may serve as the basis for action or decisions by the Secretary or Department as authorized by this Article."

Sec. 32. G.S. 113, Article 1 is amended, in its title, by deleting "*Natural Resources and Community Development*" and substituting "*Environment, Health, and Natural Resources*".

Sec. 33. G.S. 113-8 reads as rewritten:

"*§ 113-8. Powers and duties of the ~~Department of Natural Resources and Community Development~~ Department.*

The Department ~~of Natural Resources and Community Development~~ shall make investigations of the natural resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests and parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in G.S. 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State, and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing all laws relating to the conservation of marine and estuarine resources.

The Department ~~of Natural Resources and Community Development~~ may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the State and its resources, and it is authorized to cooperate with other departments and agencies of the State in obtaining and making public such information.

The Department ~~of Natural Resources and Community Development~~ may acquire such real and personal property as may be found desirable and necessary for the performance of the duties and functions of the Department and pay for same out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired shall be in the name of the State of North Carolina for the use and benefit of the Department."

Sec. 34. G.S. 113-14.1(b) reads as rewritten:

"(b) The following powers are hereby granted to the Secretary ~~of Natural Resources and Community Development~~ and may be delegated to the administrative head of an existing or new division of the Department as herein authorized:

(1) to (3) Repealed by Session Laws 1977, c. 198, s. 18.

(4) Study the development of the seacoast areas and implement policies which will promote the development of the coastal area, with particular emphasis upon the development of the scenic and recreational resources of the seacoast;

(5) Advise and confer with various interested individuals, organizations and State, federal and local agencies which are interested in development of the seacoast area and use its facilities and efforts in planning, developing and carrying out overall programs for the development of the area as a whole;

(6) Act as liaison between agencies of the State, local government, and agencies of the federal government concerned with development of the seacoast region;

(7) Repealed by Session Laws 1973, c. 1262, s. 28;

(8) Make such reports to the Governor as he may request;

(9) File such recommendations or suggestions as it may deem proper with other agencies of the State, local or federal governments."

Sec. 35. G.S. 113-14.3 reads as rewritten:

"*§ 113-14.3. Publications.*

The Department ~~of Natural Resources and Community Development~~ shall publish, from time to time, reports and statements, with illustrations, maps, and other descriptions, which shall adequately set forth the natural and material resources of the State for the purpose of furnishing information to educate the people about the natural and material resources of the State."

Sec. 36. G.S. 113-16 reads as rewritten:

"*§ 113-16. Cooperation with agencies of the federal government.*

The Department ~~of Natural Resources and Community Development~~ is authorized to arrange for and accept such aid and cooperation from the several United States government bureaus and other sources as may assist in completing topographic surveys and in carrying out the other objects of the Department.

The Department ~~of Natural Resources and Community Development~~ is further authorized and directed to cooperate with the Federal Power Commission in carrying out the rules ~~and regulations promulgated~~ adopted by that Commission; and to act in behalf of the State in carrying out any ~~regulations that may be passed~~ rules that may be adopted relating to water powers in this State other than those related to making and regulating rates. The provisions of this section are extended to apply to cooperation with authorized agencies of other states."

Sec. 37. G.S. 113-17 reads as rewritten:

"*§ 113-17. Agreements, negotiations and conferences with federal government.*

The Department ~~of Natural Resources and Community Development~~ is delegated as the State agency to represent North Carolina in any agreements, negotiations, or conferences with authorized agencies of adjoining or other states, or agencies of the federal government, relating to the joint administration or control over the surface or underground waters passing or flowing from one state to another; ~~Provided, that in all matters relating to pollution of said waters the Department and the Department of Human Resources, acting jointly, are hereby designated as the official agency~~ under the provisions of this section."

Sec. 38. G.S. 113-18 reads as rewritten:

"*§ 113-18. Department authorized to receive funds from Federal Power Commission.*

All sums payable to the State of North Carolina by the Treasurer of the United States of America under the provisions of section 17 and other sections of the Federal Water Power Act shall be paid to the account of the ~~State~~ Department ~~of Natural Resources and Community Development~~ as the authorized agent of the State for receipt of said payments. Such sums shall be used by the Department ~~of Natural Resources and Community Development~~ in prosecuting investigations for the utilization and development of the water resources of the State."

Sec. 39. G.S. 113-19 reads as rewritten:

"§ *113-19. Cooperation with other State departments.*

The Department ~~of Natural Resources and Community Development~~ is authorized to cooperate with the North Carolina Utilities Commission in investigating the waterpowers in the State, and to furnish the Utilities Commission such information as is possible regarding the location of the waterpower sites, developed waterpowers, and such other information as may be desired in regard to waterpower in the State; the Department ~~of Natural Resources and Community Development~~ shall also cooperate as far as possible with the Department of Labor, the State Department of Agriculture, and other departments and institutions of the State in collecting information in regard to the resources of the State and in preparing the same for publication in such manner as may best advance the welfare and improvement of the State."

Sec. 40. G.S. 113-20 reads as rewritten:

"§ *113-20. Cooperation with counties and municipal corporations.*

The Department ~~of Natural Resources and Community Development~~ is authorized to cooperate with the counties of the State in any surveys to ascertain the natural resources of the county; and with the governing bodies of cities and towns, with boards of trade and other like civic organizations, in examining and locating water supplies and in advising and recommending plans for other municipal improvements and enterprises. Such cooperation is to be conducted upon such terms as the Department ~~of Natural Resources and Community Development~~ may direct."

Sec. 41. G.S. 113-21 reads as rewritten:

"§ *113-21. Cooperation of counties with State in making water resource survey.*

The board of county commissioners of any county of North Carolina is authorized and empowered, in their discretion, to cooperate with the Department ~~of Natural Resources and Community Development~~ or other association, organization, or corporation in making surveys of any of the natural resources of their county, and to appropriate and pay out of the funds under their control such

proportional part of the cost of such survey as they may deem proper and just."

Sec. 42. G.S. 113-22 reads as rewritten:

"*§ 113-22. Control of State forests.*

The Department ~~of Natural Resources and Community Development~~ and Secretary ~~of Natural Resources and Community Development~~ shall have charge of all State forests, and measures for forest fire prevention."

Sec. 43. G.S. 113-23 reads as rewritten:

"*§ 113-23. Control of Mount Mitchell Park and other ~~State parks.~~ parks in the North Carolina State Parks System.*

The Department ~~of Natural Resources and Community Development~~ shall have the control and management of Mount Mitchell Park and of any other parks which have been or may be acquired by the State as ~~State parks.~~ part of the North Carolina State Parks System."

Sec. 44. G.S. 113-26.1 reads as rewritten:

"*§ 113-26.1. Bureau of Mines; mineral museum.*

The Governor and the Council of State are hereby authorized, in their discretion and at such times as the development of the mineral resources and the expansion of mining operations in the State justify and make reasonably necessary, to create and establish as a part of the Department ~~of Natural Resources and Community Development~~ a Bureau of Mines, or a mineral museum in cooperation with the National Park Service, to be located in the western part of the State, with a view to rendering such aid and assistance to mining developments in this State as may be helpful in this expanding industry, and to allocate from the Contingency and Emergency Fund such funds as may reasonably be necessary for the establishment and operation of such Bureau of Mines or mineral museum.

The Department ~~of Natural Resources and Community Development~~ may adopt rules governing the operation of a Bureau of Mines or mineral museum established under this section."

Sec. 45. G.S. 113-28 reads as rewritten:

"*§ 113-28. Reimbursement of government for expense of emergency conservation work.*

When and if, upon the sale of State lands or its products, the Secretary ~~of Natural Resources and Community Development~~ determines that the State has derived a direct profit as a result of work on the land sold, or on land the products of which are sold, done or to be done, under a project carried on pursuant to an act of Congress entitled, 'An act for the relief of unemployment through the performance of useful public work, and for other purposes' approved March 31, 1933, one half of such profit from such sale of land, or one half the proceeds of the sale of such products, or such lesser

amount as may be sufficient, shall be applied to or toward reimbursing the United States government for moneys expended by it under such act, for the work so done, to the extent and at the rate of one dollar ($1.00) per man per day, for the time spent in such work, but not exceeding in the aggregate three dollars ($3.00) per acre. The Secretary ~~of Natural Resources and Community Development~~ shall fix and determine the amount of such profit or proceeds. Such one-half part of such proceeds or profits, as the case may be, shall be retained by the Department ~~of Natural Resources and Community Development~~, or paid over to it by any other authorized agency making the sale, to be so retained by such Department until the account of the United States government, with respect to such sale, becomes liquidated. Upon completion of the sale, the Department ~~of Natural Resources and Community Development~~ is hereby authorized to settle with the proper federal authority an account fixing the amount due the United States government and to pay over to it the amount so fixed. The unexpended remainder, if any, of such one-half part of such profit or proceeds shall then be paid over or applied by said Department ~~of Natural Resources and Community Development~~ as now authorized and directed by law. This section shall not be construed to authorize the sale of State lands or products, but applies only to a sale now or hereafter authorized by other provisions of law. This section is enacted to procure a continuance of the emergency conservation work within the State, under such act of Congress."

Sec. 46. G.S. 113-28.1 reads as rewritten:

"*§ 113-28.1. Designated employees commissioned special peace officers by Governor.*

Upon application by the Secretary of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources, the Governor is hereby authorized and empowered to commission as special peace officers such of the employees of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources as the Secretary may designate for the purpose of enforcing the laws~~,~~ and rules ~~and regulations~~ enacted or adopted for the protection, preservation and government of State parks, lakes, reservations and other lands or waters under the control or supervision of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources."

Sec. 47. G.S. 113-28.2 reads as rewritten:

"*§ 113-28.2. Powers of arrest.*

Any employee of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources commissioned as a special peace officer shall have the right

to arrest with warrant any person violating any law~~,~~ or rule ~~or regulation~~ on or relating to the State parks, lakes, reservations and other lands or waters under the control or supervision of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources, and shall have the power to pursue and arrest without warrant any person violating in his presence any law~~,~~ or rule ~~or regulation~~ on or relating to said parks, lakes, reservations and other lands or waters under the control or supervision of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources."

Sec. 48. G.S. 113-28.23 reads as rewritten:

"*§ 113-28.23. Designation of administering agency powers and responsibilities.*

(a) For purposes of this Article, 'Department' means the Department of Commerce and 'Secretary' means the Secretary of Commerce.

(b) The Department of ~~Natural Resources and Community Development~~ Commerce ~~(hereinafter 'Department')~~ is directed to carry out the purposes and provisions of this Article. In carrying out this directive, the Secretary of the Department ~~(hereinafter 'Secretary')~~ shall promulgate rules consistent with the purposes and provisions of this Article."

Sec. 49. G.S. 113-29 reads as rewritten:

"*§ 113-29. Policy and plan to be inaugurated by Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources.*

(a) In this Article, unless the context requires otherwise, the expression 'Department' means the Department of Environment, Health, and Natural Resources; 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) The Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:

(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.

(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.

(3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise with

forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.

(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department ~~of Natural Resources and Community Development~~ as State demonstration forests for experiment and demonstration in forest management."

Sec. 50. G.S. 113-29.1 reads as rewritten:

"*§ 113-29.1. Growing of timber on unused State lands authorized.*

The Department of Administration may allocate to the Department ~~of Natural Resources and Community Development~~, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department ~~of Natural Resources and Community Development~~ shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Secretary ~~of Natural Resources and Community Development~~ may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Secretary ~~of Natural Resources and Community Development~~, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department ~~of Natural Resources and Community Development~~."

Sec. 51. G.S. 113-30 reads as rewritten:

"*§ 113-30. Use of lands acquired by counties through tax foreclosures as demonstration forests.*

The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said

Department ~~of Natural Resources and Community Development~~ title to such tax-delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the Secretary ~~of Natural Resources and Community Development~~ may be suitable for the purposes named in G.S. 113-29, subdivision (5)."

Sec. 52. G.S. 113-31 reads as rewritten:

"*§ 113-31. Procedure for acquisition of delinquent tax lands from counties.*

In the carrying out of the provisions of G.S. 113-30, the several boards of county commissioners shall furnish forthwith on written request of the Department ~~of Natural Resources and Community Development~~ a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the Secretary ~~of the Department of Natural Resources and Community Development~~ shall have the lands examined and if any one or more of these properties is in his judgment suitable for the purposes set forth in G.S. 113-30, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee-simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined."

Sec. 53. G.S. 113-32 reads as rewritten:

"*§ 113-32. Purchase of lands for use as demonstration forests.*

Where no suitable tax-delinquent lands are available and in the judgment of the Department ~~of Natural Resources and Community Development~~ the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 113-29 to 113-33 shall allow the Department ~~of Natural Resources and Community Development~~ to acquire land under the right of eminent domain."

Sec. 54. G.S. 113-34 reads as rewritten:

"*§ 113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States; leases for recreational purposes; rules governing public use.*

(a) The Governor of the State is authorized upon recommendation of the Department ~~of Natural Resources and Community Development~~ to accept gifts of land to the State, the same to be held, protected, and administered by said Department ~~of Natural Resources and~~

~~Community Development~~ as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The ~~State~~ Department ~~of Natural Resources and Community Development~~ shall have the power to purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for such purposes any special appropriations or funds available. The ~~State~~ Department ~~of Natural Resources and Community Development~~ shall also have the power to acquire by condemnation under the provisions of Chapter 40, such areas of land in different sections of the State as may in the opinion of the Department ~~of Natural Resources and Community Development~~ be necessary for the purpose of establishing and/or developing State forests, State parks and other areas and developments essential to the effective operation of the State forestry and State park activities with which the Department ~~of Natural Resources and Community Development~~ has been or may be entrusted. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be administered, developed and used for experiment and demonstration in forest management, for public recreation and for such other purposes authorized or required by law: Provided, that before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where such property may be situate, and until such approval is obtained, the rights and powers conferred by this section shall not be exercised. The Attorney General of the State is directed to see that all deeds to the State for land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made.

(b) The Department ~~of Natural Resources and Community Development~~ is further authorized and empowered to accept as gifts to the State of North Carolina such forest and submarginal farmland acquired by said federal government as may be suitable for the purpose of creating and maintaining State-controlled forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas, or to enter into longtime leases with the federal government for such areas and administer them with such funds as may be secured from their administration in the best interest of longtime public use, supplemented by such necessary appropriations as may be made by the General Assembly. The Department ~~of Natural Resources and Community Development~~ is further empowered

to segregate State hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of such forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

(c) The Department ~~of Natural Resources and Community Development~~, with the approval of the Governor and Council of State, is further authorized and empowered to enter into leases of lands and waters for State parks, State lakes and recreational purposes; and the ~~State~~ Department ~~of Natural Resources and Community Development~~ may construct, operate and maintain on said lands and waters suitable public service facilities and conveniences and may charge and collect reasonable fees for

(1) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on said waters under its own ~~regulations~~ rules;

(2) Fishing privileges in said waters, provided that such privileges shall be extended only to holders of bona fide North Carolina fishing licenses, and provided further that all State fishing laws and rules are complied with.

(d) The Department ~~of Natural Resources and Community Development~~ may make reasonable rules for the operation and use of boats or other craft on the surface of the said waters but shall not be authorized to charge or collect fees for such operation or use.

(e) The Department may make reasonable rules for the regulation of the use by the public of said lands and waters and of public service facilities and conveniences constructed thereon, and said rules shall have the force and effect of law and any violation of such rules shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or imprisonment of not more than 30 days.

(f) The authority herein granted is in addition to other authority now held and exercised by the Department ~~of Natural Resources and Community Development~~."

Sec. 55. G.S. 113-35 reads as rewritten:

"*§ 113-35. State timber may be sold by Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources; forest nurseries; control over parks, etc.; operation of public service facilities; concessions to private concerns.*

(a) Timber and other products of such State forestlands may be sold, cut and removed under rules of the Department ~~of Natural Resources and Community Development~~. The Department shall have authority to establish and operate forest tree nurseries and forest tree

seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules of the Department ~~of Natural Resources and Community Development~~. When the Secretary ~~of Natural Resources and Community Development~~ determines that a surplus of seedlings or seed exists, this surplus may be sold, and such sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State. The Department shall make reasonable rules for the regulation of the use by the public of such and all State forests, State parks, State lakes, game refuges and public shooting grounds under its charge, which rules, after having been posted in conspicuous places on and adjacent to such properties of the State and at the courthouse of the county or counties in which such properties are situated shall have the force and effect of law and any violation of such rules shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or by imprisonment for not exceeding 30 days.

(b) The Department may construct and operate within the State forests, State parks, State lakes and any other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of same; it may also charge and collect reasonable fees for:

(1) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on State lakes under its own ~~regulations;~~ rules;

(2) Hunting privileges on State forests and fishing privileges in State forests, State parks and State lakes, provided that such privileges shall be extended only to holders of bona fide North Carolina hunting and fishing licenses, and provided further that all State game and fish laws are complied with.

(c) The Department ~~of Natural Resources and Community Development~~ may make reasonable rules for the operation and use of boats or other craft on the surface of the said waters but shall not be authorized to charge or collect fees for such operation or use.

(d) The Department may also grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department ~~of Natural Resources and Community Development~~ shall deem to be in the public interest. The department may make reasonable rules for the ~~regulations [regulation]~~ regulation of the use by the public of the

public service facilities and conveniences herein authorized, which rules shall have the force and effect of law, and any violation of such rules shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or by imprisonment for not exceeding 30 days."

Sec. 56. G.S. 113-35.1 reads as rewritten:

"§ *113-35.1. Uniforms for seasonal park employees.*

The Department ~~of Natural Resources and Community Development~~ shall design and adopt a distinguishing uniform vest for seasonal park employees. This vest shall be designed in one size to fit all seasonal employees. The Department shall furnish each seasonal employee with a uniform vest. The seasonal employee shall be required to wear the vest during working hours and shall be required to return the vest at the end of the season or upon termination of employment."

Sec. 57. G.S. 113-36 reads as rewritten:

"§ *113-36. Applications of proceeds from sale of products.*

(a) Application of Proceeds Generally. -- Except as provided in subsection (b) of this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department ~~of Natural Resources and Community Development~~; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Secretary~~, Department of Natural Resources and Community Development~~.

(b) Tree Cone and Seed Purchase Fund. -- A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year, shall be placed in a special, continuing and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Secretary~~, Department of Natural Resources and Community Development~~. The percentage of the sales placed in the fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the secretary shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the department must purchase. Money in this fund shall not be allowed to accumulate in excess of the amount needed to purchase a four-year supply of tree cones and seed, and shall be used for no purpose other than the purchase of tree cones and seeds."

Sec. 58. G.S. 113-40 reads as rewritten:

"§ *113-40. Donations of property for forestry or park purposes; agreements with federal government or agencies for acquisition.*

The Department ~~of Natural Resources and Community Development~~ is hereby authorized and empowered to accept gifts, donations or contributions of land suitable for forestry or park purposes and to enter into agreements with the federal government or other agencies

for acquiring by lease, purchase or otherwise such lands as in the judgment of the Department are desirable for State forests or State parks."

Sec. 59. G.S. 113-44.5(b) reads as rewritten:

"(b) The purpose of this Article is to direct the Secretary ~~of the Department of Natural Resources and Community Development~~ to conduct continuing studies and investigations and make recommendations to future sessions of the General Assembly. These investigations and recommendations should be:

(1) Designed to assure the continuous growing and harvesting of forest tree species and to protect the soil, air, and water resources, including but not limited to streams, lakes, and estuaries;

(2) Designed to coordinate activities among State agencies that are concerned with the forest environment;

(3) Designed to develop programs to deal with emerging forestry problems, including but not limited to forest taxation, forest incentives, and forest practices;

(4) Designed to keep the General Assembly fully informed concerning forestry and its related problems and needs; and

(5) Designed to develop needed legislation to further the purposes of this Article."

Sec. 60. G.S. 113-51 reads as rewritten:

"§ *113-51. Powers of Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources.*

(a) The ~~State~~ Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this State, and it is hereby authorized to enter into an agreement with the Secretary of Agriculture of the United States for the protection of the forested watersheds of streams in this State.

(b) In this Article, unless the context requires otherwise:

(1) 'Department' means the Department of Environment, Health, and Natural Resources.

(2) 'Secretary' means the Secretary of Environment, Health, and Natural Resources."

Sec. 61. G.S. 113-52 reads as rewritten:

"§ *113-52. Forest rangers.*

The Secretary ~~of Natural Resources and Community Development~~ may appoint one county forest ranger and one or more deputy forest rangers in each county of the State in which, after careful investigation, the amount of forestland and the risks from forest fires

shall, in his judgment, warrant the establishment of a forest fire organization."

Sec. 62. G.S. 113-54 reads as rewritten:

"*§ 113-54. Duties of forest rangers; payment of expenses by State and counties.*

Forest rangers shall have charge of measures for controlling forest fires, protection of forests from pests and diseases, and the development and improvement of the forests for maximum production of forest products; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the Secretary ~~of Natural Resources and Community Development~~; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the Secretary ~~of Natural Resources and Community Development~~, and shall perform such other acts and duties as shall be considered necessary by the Secretary ~~of Natural Resources and Community Development~~ in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the Secretary ~~of Natural Resources and Community Development~~; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the Secretary ~~of Natural Resources and Community Development~~ shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the Secretary ~~of Natural Resources and Community Development~~. Appropriations made by a county for the purposes set out in Articles 4, 4A, 4C and 6A of this Chapter in the cooperative forest protection, development and improvement work are not to replace State and federal funds which may be available to the Secretary ~~of Natural Resources and Community Development~~ for the work in said county, but are to serve as a supplement thereto. The funds appropriated to the Department ~~of Natural Resources and Community Development~~ in the biennial budget appropriation act for the purposes set out in Articles 4, 4A, 4C and 6A of this Chapter shall not be expended in a county unless that county shall contribute at

least twenty-five percent (25%) of the total cost of the forestry program."

Sec. 63. G.S. 113-55(a) reads as rewritten:

"(a) Forest rangers shall prevent and extinguish forest fires and shall have control and direction of all persons and equipment while engaged in the extinguishing of forest fires. During a season of drought, the Secretary ~~of the Department of Natural Resources and Community Development~~ or his designate may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland, the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or deputy forest ranger may summon any resident between the ages of 18 and 45 years, inclusive, to assist in extinguishing fires and may require the use of crawler tractors and other property needed for such purposes; any person so summoned and who is physically able who refuses or neglects to assist or to allow the use of equipment and such other property required shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00). No action for trespass shall lie against any forest ranger, deputy forest ranger, or person summoned by him for crossing lands, backfiring, burning out or performing his duties as a forest ranger or deputy forest ranger."

Sec. 64. G.S. 113-55.1 reads as rewritten:

"§ *113-55.1. Powers of forest law-enforcement officers.*

The Secretary ~~of the Department of Natural Resources and Community Development~~ is authorized to appoint as many forest law-enforcement officers as he deems necessary to carry out the forest law-enforcement responsibilities of the Department ~~of Natural Resources and Community Development~~. Forest law-enforcement officers shall have all the powers and the duties of a forest ranger enumerated in G.S. 113-54 and 113-55. Forest law-enforcement officers shall, in addition to their other duties, have the powers of peace officers to enforce the forest laws. Any forest law-enforcement officer may arrest, without warrant, any person or persons committing any crime in his presence or whom such officer has probable cause for believing has committed a crime in his presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. Forest law-enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated ~~regulation~~ rule of the Department ~~of Natural Resources and Community Development~~."

Sec. 65. G.S. 113-56 reads as rewritten:

"§ *113-56. Compensation of forest rangers.*

Forest rangers shall receive compensation from the Department ~~of Natural Resources and Community Development~~ at a reasonable rate to be fixed by said Department ~~of Natural Resources and Community Development~~ for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in the performance of their duties, according to an itemized statement to be rendered the Secretary ~~of Natural Resources and Community Development~~ every month, and approved by him. Forest rangers shall render to the Secretary ~~of Natural Resources and Community Development~~ a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this Article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the Secretary ~~of Natural Resources and Community Development~~. If said bill be duly approved by the Secretary ~~of Natural Resources and Community Development~~, it shall be paid by direction of the Department ~~of Natural Resources and Community Development~~ out of any funds provided for that purpose."

Sec. 66. G.S. 113-56.1 reads as rewritten:

"*§ 113-56.1. Overtime compensation for forest fire fighting.*

The Department ~~of Natural Resources and Community Development~~ shall, within funds appropriated to the Department, provide overtime compensation to the professional employees of the Forest Resources Division involved in fighting forest fires."

Sec. 67. G.S. 113-58 reads as rewritten:

"*§ 113-58. Misdemeanor to destroy posted forestry notice.*

Any person who shall maliciously or willfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the Secretary ~~of Natural Resources and Community Development~~, under the provisions of this Article, or any other act which may be passed for the purpose of protecting and developing the forests in this State, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00), or imprisoned not exceeding 30 days."

Sec. 68. G.S. 113-59 reads as rewritten:

"*§ 113-59. Cooperation between counties and State in forest protection and development.*

The board of county commissioners of any county is hereby authorized and empowered to cooperate with the Department ~~of Natural Resources and Community Development~~ in the protection, reforestation, and promotion of forest management of their own forests within their respective counties, and to appropriate and pay out of the

funds under their control such amount as is provided in G.S. 113-54."

Sec. 69. G.S. 113-60 reads as rewritten:

"*§ 113-60. Instructions on forest preservation and development.*

(a) It shall be the duty of all district, county, township rangers, and all deputy rangers provided for in this Chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest preservation, development, and forest management.

(b) It shall be the duty of the various rangers herein mentioned under the direction of the Secretary ~~of Natural Resources and Community Development~~, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, the development and scientific management of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do."

Sec. 70. G.S. 113-60.1 reads as rewritten:

"*§ 113-60.1. Authority of Governor to close forests and woodlands to hunting, fishing and trapping.*

During periods of protracted drought or when other hazardous fire conditions threaten forest and water resources and appear to require extraordinary precautions, the Governor of the State, upon the joint recommendation of the Secretary ~~of Natural Resources and Community Development~~ and the Executive Director of the North Carolina Wildlife Resources Commission, may by official proclamation:

(1) Close any or all of the woodlands and inland waters of the State to hunting, fishing and trapping for the period of the emergency.

(2) Forbid for the period of the emergency the building of campfires and the burning of brush, grass or other debris within 500 feet of any woodland in any county, counties, or parts thereof.

(3) Close for the period of the emergency any or all of the woodlands of the State to such other persons and activities as

he deems proper under the circumstances, except to the owners or tenants of such property and their agents and employees, or persons holding written permission from any owner or his recognized agent to enter thereon for any lawful purpose other than hunting, fishing or trapping."

Sec. 71. G.S. 113-60.2 reads as rewritten:

"§ *113-60.2. Publication of proclamation; annulment thereof.*

Such proclamation shall become effective 24 hours after certified time of issue, and shall be published in such newspapers and posted in such places and in such manner as the Governor may direct. It shall be annulled in the same manner by another proclamation by the Governor when he is satisfied, upon joint recommendation of the Secretary ~~of Natural Resources and Community Development~~ and the Executive Director of the North Carolina Wildlife Resources Commission, that the period of the emergency has passed."

Sec. 72. G.S. 113-60.4 reads as rewritten:

"§ *113-60.4. Purpose and intent.*

(a) The purpose of this Article is to place within the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources, the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases.

(b) In this Article, unless the context requires otherwise, the expression 'Department' means the Department of Environment, Health, and Natural Resources: 'Secretary' means the Secretary of Environment, Health, and Natural Resources."

Sec. 73. G.S. 113-60.5 reads as rewritten:

"§ *113-60.5. Authority of the ~~Department of Natural Resources and Community Development~~ Department.*

The authority and responsibility for carrying out the purpose, intent and provisions of this Article are hereby delegated to the Department ~~of Natural Resources and Community Development~~. The administration of the provisions of this Article shall be under the general supervision of the Secretary ~~of Natural Resources and Community Development~~. The provisions of this Article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of Agriculture under existing statutes."

Sec. 74. G.S. 113-60.6(4) reads as rewritten:

"(4) 'Infection' means attack by any disease affecting forest trees which is declared by the Secretary ~~of Natural Resources and Community Development~~ to be dangerously injurious thereto."

Sec. 75. G.S. 113-60.6(5) reads as rewritten:

"(5) 'Infestation' means attack by means of any insect, which is by the Secretary ~~of Natural Resources and Community Development~~ declared to be dangerously injurious to forest trees."

Sec. 76. G.S. 113-60.7 reads as rewritten:

"*§ 113-60.7. Action against insects and diseases.*

Whenever the Secretary ~~of Natural Resources and Community Development~~, or his agent, determines that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potentially injurious to the timber or forest trees within the State of North Carolina, and that said infestation or infection is of such a character as to be a menace to the timber or forest growth of the State, the Secretary ~~of Natural Resources and Community Development~~ shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries so as to definitely describe and identify said zone of infestation or infection, and the Secretary ~~of Natural Resources and Community Development~~ or his agent shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection, the recommended control measures, and offer him technical advice on methods of carrying out controls."

Sec. 77. G.S. 113-60.8 reads as rewritten:

"*§ 113-60.8. Authority of Secretary ~~of Natural Resources and Community Development~~ and his agents to go upon private land within control zones.*

The Secretary ~~of Natural Resources and Community Development~~ or his agents shall have the power to go upon the land within any zone of infestation or infection and take measures to control, suppress or eradicate the insect, infestation or disease infection. If any person refuses to allow the Secretary ~~of Natural Resources and Community Development~~ or his agents to go upon his land, or if any person refuses to adopt adequate means to control or eradicate the insect, infestation or disease infection, the Secretary ~~of Natural Resources and Community Development~~ may apply to the superior court of the county in which the land is located for an injunction or other appropriate remedy to restrain the landowner from interfering with the Secretary ~~of Natural Resources and Community Development~~ or his agents in entering the control zone and adopting measures to control, suppress or eradicate the insect infestation or disease infection, provided the cost of court or control thereof shall not be a liability against the forest landowner nor constitute a lien upon the real property of such infested area."

Sec. 78. G.S. 113-60.9 reads as rewritten:

"*§ 113-60.9. Cooperative agreements.*

In order to more effectively carry out the purposes of this Article, the Department ~~of Natural Resources and Community Development~~ is hereby authorized to enter into cooperative agreement with the federal government and other public and private agencies, and with the owners of forestland."

Sec. 79. G.S. 113-60.10 reads as rewritten:

"§ *113-60.10. Annulment of control zone.*

Whenever the Secretary ~~of Natural Resources and Community Development~~ determines that the forest insect or disease control work within a designated control zone is no longer necessary or feasible, then the Secretary ~~of Natural Resources and Community Development~~ shall declare the zone of infestation or infection no longer pertinent to the purposes of this Article and such zone will then no longer be recognized."

Sec. 80. G.S. 113-61 reads as rewritten:

"§ *113-61. Private limited dividend corporations may be formed.*

(a) In this Article, unless the context requires otherwise, the expression 'Department' means the Department of Environment, Health, and Natural Resources; 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the Secretary ~~of Natural Resources and Community Development~~ shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article."

Sec. 81. G.S. 113-62 reads as rewritten:

"§ *113-62. Manner of organizing.*

A corporation formed under this Article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this Article and that it consents to be and shall be at all times subject to the rules~~, regulations~~ and supervision of the Secretary ~~of Natural Resources and Community Development~~, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules ~~and regulations~~ from time to

time imposed by the Secretary ~~of Natural Resources and Community Development~~."

Sec. 82. G.S. 113-63 reads as rewritten:

"*§ 113-63. Directors.*

There shall not be less than three directors, one of whom shall always be a person designated by the Secretary ~~of Natural Resources and Community Development~~, which one need not be a stockholder."

Sec. 83. G.S. 113-64 reads as rewritten:

"*§ 113-64. Duties of supervision by Secretary of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources.*

Corporations formed under this Article shall be regulated by the Secretary ~~of Natural Resources and Community Development~~ in the manner provided in this Article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this Article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties which cannot be fairly charged to any particular corporation or corporations shall be charged to, and paid by, all the corporations then organized and existing under this Article pro rata according to their respective stock capitalizations. The Secretary ~~of Natural Resources and Community Development~~ shall:

(1) Adopt rules to implement this Article and to protect and develop forests subject to its jurisdiction.

(2) Order all corporations organized under this Article to do such acts as may be necessary to comply with the provisions of law and the rules ~~and regulations~~ adopted by the Secretary ~~of Natural Resources and Community Development~~, or to refrain from doing any acts in violation thereof.

(3) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the Secretary ~~of Natural Resources and Community Development~~.

(4) Require every such corporation to file with the Secretary ~~of Natural Resources and Community Development~~ annual reports and, if the Secretary ~~of Natural Resources and Community Development~~ shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the Secretary ~~of Natural Resources and Community Development~~ may require."

Sec. 84. G.S. 113-65 reads as rewritten:

"*§ 113-65. Powers of Secretary.*

The Secretary ~~of Natural Resources and Community Development~~ may:

(1) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(2) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The Secretary ~~of Natural Resources and Community Development~~ shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(3) Enforce the provisions of this Article, a rule implementing this Article, or an order issued under this Article by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief."

Sec. 85. G.S. 113-66 reads as rewritten:

"§ *113-66. Provision for appeal by corporations to Governor.*

If any corporation organized under this Article is dissatisfied with or aggrieved at any ~~regulation,~~ rule or order imposed upon it by the Secretary ~~of Natural Resources and Community Development~~, or any valuation or appraisal of any of its property made by the Secretary ~~of Natural Resources and Community Development~~, or any failure of or refusal by the Secretary ~~of Natural Resources and Community Development~~ to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the Governor by filing with him a claim of appeal upon which the decision of the Governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the Governor in a written mandate to the Secretary ~~of Natural Resources and Community Development~~, who shall abide thereby and take such actions as the same may direct."

Sec. 86. G.S. 113-68 reads as rewritten:

"§ *113-68. Issuance of securities restricted.*

No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the

State of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the Secretary ~~of Natural Resources and Community Development~~."

Sec. 87. G.S. 113-70 reads as rewritten:

"*§ 113-70. Earnings above dividend requirements payable to State.*

Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in G.S. 113-67 shall be paid over to the State of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the Secretary ~~of Natural Resources and Community Development~~ shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered."

Sec. 88. G.S. 113-71 reads as rewritten:

"*§ 113-71. Dissolution of corporation.*

Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the State of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within 20 years of the date of its organization unless the same is accompanied by a certificate of the Secretary ~~of Natural Resources and Community Development~~ consenting to such dissolution."

Sec. 89. G.S. 113-72 reads as rewritten:

"*§ 113-72. Cutting and sale of timber.*

Any such corporation may cut and sell the timber on its land or permit the cutting thereof, but all such cuttings shall be in accordance with the ~~regulations~~ rules, restrictions and limitations imposed by the Secretary ~~of Natural Resources and Community Development~~, who shall impose such ~~regulations~~ rules, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time."

Sec. 90. G.S. 113-73 reads as rewritten:

"*§ 113-73. Corporation may not sell or convey without consent of Secretary, or pay higher interest rate than 6%.*

No such corporation shall:

(1) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the Secretary ~~of Natural Resources and Community Development~~ of the terms of such sale, transfer or assignment, and unless the Secretary ~~of Natural Resources and Community Development~~ shall consent thereto, and if the Secretary ~~of Natural Resources and Community Development~~ shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the ~~regulations~~ rules and supervision of the Secretary ~~of Natural Resources and Community Development~~ for such period as the latter may require:

(2) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum (6%) per annum without the consent of the Secretary ~~of Natural Resources and Community Development~~;

(3) Mortgage any real property without first having obtained the consent of the Secretary ~~of Natural Resources and Community Development~~."

Sec. 91. G.S. 113-74 reads as rewritten:

"*§ 113-74. Power to borrow money limited.*

Any such corporation formed under this Article may, subject to the approval of the Secretary ~~of Natural Resources and Community Development~~, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the Secretary ~~of Natural Resources and Community Development~~, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the ~~regulations~~ rules of the Secretary ~~of Natural Resources and Community Development~~ for such period as the mortgage or trust indenture may specify."

Sec. 92. G.S. 113-75 reads as rewritten:

"*§ 113-75. Secretary to approve development of forests.*

No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the Secretary ~~of Natural Resources and Community Development~~, and such approval shall not be given unless:

(1) The Secretary ~~of Natural Resources and Community Development~~ shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the Secretary ~~of~~

~~Natural Resources and Community Development~~ shall require of the activities to be included in the project, such statement to set forth the proposals as to

a. Fire prevention and protection,
b. Protection against insects and tree diseases,
c. Protection against damage by livestock and game,
d. Means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and
e. Planting and spacing of trees.

(2) There shall be submitted to the Secretary ~~of Natural Resources and Community Development~~ a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the Secretary ~~of Natural Resources and Community Development~~ as to where such funds are to be secured.

(3) The Secretary ~~of Natural Resources and Community Development~~ shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained-yield basis except insofar as the Secretary ~~of Natural Resources and Community Development~~ shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the Secretary ~~of Natural Resources and Community Development~~, and that it will at all times comply with such rules ~~and regulations~~ concerning the project as the Secretary ~~of Natural Resources and Community Development~~ shall from time to time impose."

Sec. 93. G.S. 113-76 reads as rewritten:

"§ *113-76. Application of corporate income.*

The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the Secretary ~~of Natural Resources and Community Development~~ to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, and/or to the payment of dividends not exceeding the maximum fixed by this Article; third, the balance, if any, in reduction of debts."

Sec. 94. G.S. 113-77 reads as rewritten:

"§ *113-77. Reorganization of corporations.*

Reorganization of corporations organized under this Article shall be subject to the supervision of the Secretary ~~of Natural Resources and Community Development~~ and no such reorganization shall be had without the authorization of the Secretary ~~of Natural Resources and Community Development~~."

Sec. 95. G.S. 113-81.1 reads as rewritten:

"*§ 113-81.1. Authority to render scientific forestry services.*

(a) In this Article, unless the context requires otherwise:

(1) 'Department' means the Department of Environment, Health, and Natural Resources.

(2) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) The Department ~~of Natural Resources and Community Development~~ is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. The Department is also authorized to cooperate with landowners of the State and with counties, municipalities and State agencies by making available forestry services consisting of specialized equipment and operators, or by renting such equipment, and to perform such labor and services as may be necessary to carry out approved forestry practices, including site preparation, forest planting, prescribed burning, and other appropriate forestry practices. For such services or rentals, a reasonable fee representing the Secretary's ~~of Natural Resources and Community Development's~~ estimate of not less than the costs of such services or rentals shall be charged, provided however, when the Secretary ~~of Natural Resources and Community Development~~ deems it in the public interest, said services may be provided without charge, for the purpose of encouraging the use of approved scientific forestry practice on the private or other forestlands within the State, or for the purpose of providing practical demonstrations of said practices. Receipts from these activities and rentals shall be credited to the budget of the Department ~~of Natural Resources and Community Development~~ for the furtherance of these activities."

Sec. 96. G.S. 113-81.2 reads as rewritten:

"*§ 113-81.2. Services under direction of Secretary ~~of Natural Resources and Community Development~~; compensation; when services without charge.*

(a) The administration of the provisions of this Article shall be under the direction of the Secretary ~~of Natural Resources and Community Development~~. The Secretary ~~of Natural Resources and Community Development~~, or his authorized agent, upon receipt of a request from a forest landowner or operator for technical forestry

assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products by blazing, spotting with paint or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the trees designated; he may furnish the landowner or operator with a statement of the volume of the trees so designated and estimated; he may assist in finding a suitable market for the products so designated, and he may offer general forestry advice concerning the management of the forest.

(b) For such designating, measuring or estimating services the Secretary ~~of Natural Resources and Community Development~~ may make a charge, on behalf of the Department ~~of Natural Resources and Community Development~~, in an amount not to exceed five percent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated. Upon receipt from the Secretary ~~of Natural Resources and Community Development~~ of a statement of such charges, the landowner or operator or his agent shall make payment to the Secretary ~~of Natural Resources and Community Development~~ within 30 days.

(c) In those cases where the Secretary ~~of Natural Resources and Community Development~~ deems it desirable to so designate and measure or estimate trees without charge, such services shall be given for the purpose of encouraging the use of approved scientific forestry principles on the private or other forestlands within the State, and to establish practical demonstrations of said principles."

Sec. 97. G.S. 113-81.3 reads as rewritten:

"*§ 113-81.3. Deposit of receipts with State treasury.*

All moneys paid to the Secretary ~~of Natural Resources and Community Development~~ for services rendered under the provisions of this Article shall be deposited into the State treasury to the credit of the Department ~~of Natural Resources and Community Development~~."

Sec. 98. G.S. 113-151.1 reads as rewritten:

"*§ 113-151.1. License agents.*

(a) The Secretary shall commission such persons as in his discretion he deems necessary to be license agents for the Department ~~of Natural Resources and Community Development~~; provided, that at least one such license agent shall be appointed in each county which contains or borders on coastal fishing waters. Such agents together with the Department ~~of Natural Resources and Community Development~~ shall have the authority and duty to sell all licenses provided for by this Article.

(b) License agents shall be compensated by retaining fifty cents (50¢) from each license sold. If more than one license is listed on a

consolidated license form, the license agent shall be compensated as if a single license were sold and he shall retain fifty cents (50¢)."

Sec. 99. G.S. 113-202(a)(6) reads as rewritten:

"(6) The area leased must not include an area which the ~~Department of Human Resources~~ State Health Director has recommended be closed to shellfish harvest by reason of pollution."

Sec. 100. G.S. 113-203(d) reads as rewritten:

"(d) It is lawful to transplant to private beds in North Carolina oysters taken from public beds designated by the Marine Fisheries Commission as natural seed oyster areas. Such areas shall be designated as natural seed oyster areas in the following manner:

(1) A petition shall be filed with the Secretary by the board of county commissioners of the county in which such area is located requesting the designation of and describing the area proposed as a natural seed oyster area. Upon the receipt of the petition, the Secretary shall, within six weeks of the receipt by him of such petition, cause an investigation of the area proposed to be designated as a natural seed oyster area. Such investigation shall be made by qualified biologists of the Department ~~of Natural Resources and Community Development~~. The Secretary shall then make a recommendation to the Marine Fisheries Commission as to whether the area described in the petition should be designated as a natural seed oyster area and such area shall be so designated by the Marine Fisheries Commission only after the Secretary so recommends as being in the best interests of the State.

(2) The Secretary shall issue permits to all qualified individuals who are residents of North Carolina without regard to county of residence to transplant seed oysters from said designated natural seed oyster areas, setting out the quantity which may be taken, the times which the taking is permissible and other reasonable restrictions imposed to aid him in his duty of regulating such transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful."

Sec. 101. G.S. 113-204 reads as rewritten:

"§ *113-204. Propagation of shellfish.*

The Department ~~of Natural Resources and Community Development~~ is authorized to close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish. The Department ~~of Natural Resources and Community Development~~ is authorized to expend State funds planting

such areas and to manage them in ways beneficial to the overall productivity of the shellfish industry in North Carolina. The Department ~~of Natural Resources and Community Development~~ in its discretion in accordance with desirable conservation objectives may make shellfish produced by it available to commercial fishermen generally, to those in possession of private shellfish beds, or to selected individuals cooperating with the Department ~~of Natural Resources and Community Development~~ in demonstration projects concerned with the cultivation, harvesting, or processing of shellfish."

Sec. 102. G.S. 113-206(d) reads as rewritten:

"(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Department ~~of Natural Resources and Community Development~~ may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Secretary. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the trier of fact shall fix the monetary worth of the claim. The Department ~~of Natural Resources and Community Development~~ may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Department ~~of Natural Resources and Community Development~~ may make such payments from such funds as may be available to it. An appeal lies to the appellate division by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Department ~~of Natural Resource and Community Development~~ in such actions may be represented by the Attorney General. In determining the availability of funds to the Department ~~of Natural Resources and Community Development~~ to underwrite the costs of litigation or make condemnation payments, the use which the Department ~~of Natural Resources and Community Development~~ proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner."

Sec. 103. G.S. 113-207 reads as rewritten:

"*§ 113-207. Clamming on posted oyster rocks forbidden; penalty.*

(a) The Department ~~of Natural Resources and Community Development~~ shall post to the extent that funds are available oyster rocks or appropriate landing sites to forbid the taking of clams upon such rocks by use of rakes or tongs or any other device which will disturb or damage the oysters thereon. Within the meaning of this

section, oyster rocks shall be defined as those rocks producing oysters upon which the tide rises and falls.

(b) It shall be unlawful for any person to take clams on oyster rocks posted by the Department ~~of Natural Resources and Community Development~~ by use of rakes, tongs, or any other device which will disturb or damage the oysters growing thereon. This section will not apply to the taking of clams by signing. A violation of this section shall constitute a misdemeanor, punishable by imprisonment not to exceed 30 days, or by a fine of one hundred dollars ($100.00), or by both such fine and imprisonment."

Sec. 104. G.S. 113-223 reads as rewritten:

"§ *113-223. Reciprocal agreements by Department ~~of Natural Resources and Community Development~~ generally.*

Subject to the specific provisions of G.S. 113-153 and G.S. 113-161 relating to reciprocal provisions as to landing and selling catch and as to licenses, the Department ~~of Natural Resources and Community Development~~ is empowered to make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter. Pursuant to such agreements the Department ~~of Natural Resources and Community Development~~ may modify provisions of this Subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of marine and estuarine resources."

Sec. 105. G.S. 113-224 reads as rewritten:

"§ *113-224. Cooperative agreements by Department ~~of Natural Resources and Community Development~~.*

The Department ~~of Natural Resources and Community Development~~ is empowered to enter into cooperative agreements with public and private agencies and individuals respecting the matters governed in this Subchapter. Pursuant to such agreements the Department ~~of Natural Resources and Community Development~~ may expend funds, assign employees to additional duties within or without the State, assume additional responsibilities, and take other actions that may be required by virtue of such agreements, in the overall best interests of the conservation of marine and estuarine resources."

Sec. 106. G.S. 113-226 reads as rewritten:

"§ *113-226. Administrative authority of Department ~~of Natural Resources and Community Development~~; administration of funds; delegation of powers.*

(a) In the overall best interests of the conservation of marine and estuarine resources, the Department ~~of Natural Resources and Community Development~~ may lease or purchase lands, equipment, and other property; accept gifts and grants on behalf of the State; establish boating and fishing access areas; establish fisheries, fishery

processing or storage plants, planted seafood beds, fish farms, and other enterprises related to the conservation of marine and estuarine resources as research or demonstration projects either alone or in cooperation with some individual or agency; sell the catch or processed fish or other marine and estuarine resources resulting from research fishing operations or demonstration projects; provide matching funds for entering into projects with some other governmental agency or with some scientific, educational, or charitable foundation or institution; condemn lands in accordance with the provisions of Chapter 40A of the General Statutes and other governing provisions of law; and sell, lease, or give away property acquired by it. Provided, that any private person selected to receive gifts or benefits by the Department be selected:

(1) With regard to the overall public interest that may result, and

(2) From a defined class upon such a rational basis open to all within the class as to prevent constitutional infirmity with respect to requirements of equal protection of the laws or prohibitions against granting exclusive privileges or emoluments.

(b) All money credited to, held by, or to be received by the Department in respect of the conservation of marine and estuarine resources must be deposited with the Department. In administering such funds and recommending expenditures, the Department must give attention to the sources of the revenues received so as to encourage disbursements to be made on an equitable basis; nevertheless, except as provided in this section, separate funds may not be established and particular projects and programs deemed to be of sufficient importance in the conservation of marine and estuarine resources may receive proportional shares of Department expenditures that are greater than the proportional shares of license and other revenues produced by such projects or programs for the Department.

(c) If as a precondition of receiving funds under any cooperative program there must be a separation of license revenues received from certain classes of licensees and utilization of such revenues for limited purposes, the Department is directed to make such arrangements for separate accounting or for separate funding as may be necessary to insure the use of the revenues for the required purposes and eligibility for the cooperative funds. In such instance, if required, such revenues may be retained by the Department until expended upon the limited purposes in question. This subsection applies whether the cooperative program is with a public or private agency and whether the Department acts alone on behalf of the State or in conjunction with the Wildlife Resources Commission or some other State agency.

(d) Repealed by Session Laws 1973, c. 1262, s. 28."

Sec. 107. G.S. 113-229 reads as rewritten:

"§ *113-229. Permits to dredge or fill in or about estuarine waters or state-owned lakes.*

(a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or state-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department ~~of Natural Resources and Community Development~~. Granting of the State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The ~~North Carolina~~ Department ~~of Natural Resources and Community Development~~ shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(c1) The Coastal Resources Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider:

(1) The size of the development;
(2) The impact of the development on areas of environmental concern;
(3) How often the class of development is carried out;
(4) The need for on-site oversight of the development; and
(5) The need for public review and comment on individual development projects.

General permits may be issued by the Commission as rules under the provisions of G.S. 113A-107. Individual development carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of this section. The Commission may impose reasonable notice provisions and other appropriate conditions

and safeguards on any general permit it issues. The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit.

(d) An applicant for a permit, other than an emergency permit, shall send a copy of his application to the owner of each tract of riparian property that adjoins that of the applicant. The copy shall be served by certified mail or, if the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, by publication in accordance with the rules of the Commission. An owner may file written objections to the permit with the Department for 30 days after he is served with a copy of the application. In the case of a special emergency dredge or fill permit the applicant must certify that he took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in (e) of this section, upon the express understanding from the applicant that he will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department ~~of Natural Resources and Community Development~~ among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted

subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall coordinate the issuance of permits under this section and G.S. 113A-118 to avoid duplication and to create a single, expedited permitting process. The Coastal Resources Commission may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act on an application for permit within 75 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 75 days if necessary properly to consider the application, except for applications for a special emergency permit, in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary ~~of the Department of Natural Resources and Community Development~~ is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Coastal Resources Commission may elaborate by rule upon what conditions the Secretary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that

a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the Commission makes a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit.

(g) G.S. 113A-122 applies to an appeal of a permit decision under subsection (f).

(h) Repealed by Session Laws 1987, c. 827, s. 105.

(i) All materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment of not more than 90 days, or both. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. A notice to cease shall be served personally or by certified mail.

(l) The Secretary may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the superior court in the name of the State upon the relation of the Secretary, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust, and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and state-owned lakes within the State, and the work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the ~~North Carolina~~ Department ~~of Human Resources~~ and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. ~~130-206~~ 130A-346 through ~~130-209~~

G.S. 130A-349. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

(1) 'State-owned lakes' include man-made as well as natural lakes.

(2) 'Estuarine waters' means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department ~~of Natural Resources and Community Development~~ and the Wildlife Resources Commission, within the meaning of G.S. 113-129.

(3) 'Marshland' means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt water Cordgrass (Spartina alterniflora), Black Needlerush (Juncus roemerianus), Glasswort (Salicornia spp.), Salt Grass (Distichlis spicata), Sea Lavender (Limonium spp.), Bulrush (Scirpus spp.), Saw Grass (Cladium jamaicense), Cattail (Typha spp.), Salt-Meadow Grass (Spartina patens), and Salt Reed-Grass (Spartina cynosuroides)."

Sec. 108. G.S. 113-230 reads as rewritten:

"§ *113-230. Orders to control activities in coastal wetlands.*

(a) The Secretary ~~of Natural Resources and Community Development~~, with the approval of the Coastal Resources Commission, may from time to time, for the purpose of promoting the public safety, health, and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering coastal wetlands. In this section, the term 'coastal wetlands' shall mean any marsh as defined in G.S. 113-229(n)(3), as amended, and such contiguous land as the Secretary reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

(b) The Secretary shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to interested State agencies and each owner or claimed owner

of such wetlands by certified or registered mail at least 21 days prior thereto.

(c) Upon adoption of any such order or any order amending, modifying or repealing the same, the Secretary shall cause a copy thereof, together with a plan of the lands affected and a list of the owners or claimed owners of such lands, to be recorded in the register of deeds office in the county where the land is located, and shall mail a copy of such order and plan to each owner or claimed owner of such lands affected thereby.

(d) Any person, firm or corporation that violates any order issued under the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment for not more than six months, or both in the discretion of the court.

(e) The superior court shall have jurisdiction in equity to restrain violations of such orders.

(f) Any person having a recorded interest in or registered claim to land affected by any such order may, within 90 days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, and in case he is adjudged the owner of the subject land, whether such order so restricts the use of his property as to deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of a taking without compensation. If the court finds the order to be an unreasonable exercise of the police power, as aforesaid, the court shall enter a finding that such order shall not apply to the land of the petitioner; provided, however, that such finding shall not affect any other land than that of the petitioner. The Secretary shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this subsection for the determination of the issue of whether any such order constitutes a taking without compensation shall be exclusive, and such issue shall not be determined in any other proceeding.

(g) After a finding has been entered that such order shall not apply to certain land as provided in the preceding subsection, the Department of Administration, upon the request of the Coastal Resources Commission, shall take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this section.

(h) This section shall not repeal the powers, duties and responsibilities of the Department ~~of Natural Resources and Community Development~~ under the provisions of G.S. 113-229."

Sec. 109. G.S. 113-251 reads as rewritten:

"§ *113-251. Definition of terms.*

(a) As used in this Article, the word 'Commission' refers to the Atlantic States Marine Fisheries Commission and the word 'commissioner' refers to a member of that Commission.

(b) The reference in Article III of the Compact set out in G.S. 113-252 to the chairman of the committee on commercial fisheries shall be deemed to refer to the chairman of the Marine Fisheries Commission.

(c) The reference in Article III of the Compact set out in G.S. 113-252 to the Commissioner of Commercial Fisheries shall be deemed to refer to the Secretary ~~of Natural Resources and Community Development~~.

(d) The reference in Article III of the Compact set out in G.S. 113-252 to the Board of the North Carolina Department of Conservation and Development shall be deemed to refer to the Secretary ~~of Natural Resources and Community Development~~."

Sec. 110. G.S. 113-254 reads as rewritten:

"§ *113-254. North Carolina members of Commission.*

In pursuance of Article III of said Compact there shall be three members (hereinafter called commissioners) of the Atlantic States Marine Fisheries Commission (hereinafter called Commission) from the State of North Carolina. The first commissioner from the State of North Carolina shall be the Fisheries Director of the Division of Marine Fisheries of the Department ~~of Natural Resources and Community Development~~, ex officio, and the term of such ex officio commissioner shall terminate at the time he ceases to hold such office, and his successor as commissioner shall be his successor as Fisheries Director of the Division of Marine Fisheries ~~of the Department of Natural Resources and Community Development~~. The second commissioner from the State of North Carolina shall be a legislator and member of the Commission on Interstate Cooperation of the State of North Carolina, ex officio, designated by said Commission on Interstate Cooperation, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office or said office as Commissioner on Interstate Cooperation, and his successor as commissioner shall be named in like manner. The Governor (by and with the advice and consent of the Senate) shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of said Commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such Commissioner from any reason or cause shall be filled by appointment by the Governor (by and with the

advice and consent of the Senate) for the unexpired term. The Fisheries Director of the Division of Marine Fisheries appointed pursuant to Article III as ex officio commissioner may delegate, from time to time, to any deputy or other subordinate of the Fisheries Director, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceedings of the Commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said Compact shall then have gone into effect in accordance with Article II of the Compact; otherwise they shall begin upon the date upon which said Compact shall become effective in accordance with said Article II.

Any commissioner may be removed from office by the Governor upon charges and after a hearing."

Sec. 111. G.S. 113-259(b) reads as rewritten:

"(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the ~~State~~ State, which official is the ~~Fisheries~~ Director of the Division of Marine Fisheries of the Department ~~of Natural Resources and Community Development, or the designee of such official.~~ or his designee."

Sec. 112. G.S. 113-268(e) reads as rewritten:

"(e) The Department may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to restrain a violation or threatened violation of subsections (a), (b), or (c) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Secretary ~~of Natural Resources and Community Development~~. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party."

Sec. 113. G.S. 113-291.4(i) reads as rewritten:

"(i) Upon notification by the ~~North Carolina Division of Health Services~~ State Health Director of the presence of a contagious animal disease in a local fox population, the Commission is authorized to establish such population control measures as are appropriate until notified by public health authorities that the problem is deemed to have passed."

Sec. 114. G.S. 113-291.6(f) reads as rewritten:

"(f) Nothing in this section prohibits the use of steel- or metal-jaw traps by county or State public health officials or their agents to control the spread of disease when the use of these traps has been

declared necessary by the ~~Department of Human Resources~~ State Health Director."

Sec. 115. G.S. 113-315.9 reads as rewritten:

"§ *113-315.9. Bond of financial officer; audit.*

(a) Before collecting and receiving such assessments, such treasurer or financial officer shall give bond to the agency to run in favor of the agency in the amount of the estimated total of such assessments as will be collected, and from time to time the agency may alter the amount of such bond which, at all times, must be equal to the total financial assets of the agency, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency and to be filed with the chairman or executive head of such agency.

(b) The chairman or executive head of such agency shall cause an annual certified audit to be made of the financial records of the agency. Such audit shall include, among other things, total annual compensation of each employee of the agency and detailed expenses incurred and reimbursed for each employee of the agency. The chairman or executive head of such agency shall cause a copy of the certified audit to be submitted to the Department ~~of Natural Resources and Community Development~~ within 60 days of the end of the agency's fiscal year and shall cause a copy of the audit, or a summary thereof, to be published at least once in one or more newspapers having general circulation in the area where the assessments are made within 60 days of the end of the agency's fiscal year. If the chairman or executive head of the agency shall fail to carry out the provisions of this paragraph, he shall be guilty of a misdemeanor."

Sec. 116. G.S. 113-315.18 reads as rewritten:

"§ *113-315.18. Fishermen's Economic Development Program.*

The Secretary ~~of Natural Resources and Community Development~~ is hereby authorized to provide through his Department ~~of Natural Resources and Community Development~~ and the extension services of the University of North Carolina those services intended to promote the economic development of the fishermen, including but not limited to:

(1) Instituting business management services to promote better business management practices throughout the fishing and seafood industry, and to promote the better use of credit and other business management techniques.

(2) Providing counseling services to the fishermen at all levels and assisting them in meeting the federal and State environmental, safety and health requirements.

(3) Improving waterways, harbors, inlets, and generally the water transportation system of North Carolina so as to more

efficiently and safely accommodate commercial and sport fishing craft, and to provide access to and from fishing grounds."

Sec. 117. G.S. 113-316 reads as rewritten:

"§ *113-316. General statement of purpose and effect of revisions of Subchapter IV made in 1965 and 1979.*

To clarify the conservation laws of the State and the authority and jurisdiction of the Department ~~of Natural Resources and Community Development~~ and the North Carolina Wildlife Resources Commission: commercial fishing waters are renamed coastal fishing waters and the Department is given jurisdiction over and responsibility for the marine and estuarine resources in coastal fishing waters; the laws pertaining to commercial fishing operations and marine fishing and fisheries regulated by the Department are consolidated and revised generally and broadened to reflect the jurisdictional change respecting coastal fisheries; laws relating to the conservation of wildlife resources administered by the Wildlife Resources Commission are consolidated and revised; and the enforcement authority of marine fisheries inspectors and wildlife protectors is clarified, including the authority of wildlife protectors over boating and other activities other than conservation within the jurisdiction of the Wildlife Resources Commission."

Sec. 118. G.S. 113-378 reads as rewritten:

"§ *113-378. Persons drilling for oil or gas to register and furnish bond.*

Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources or such other State agency as may hereafter be established to control the conservation of oil or gas in this State. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the aforesaid Department ~~of Natural Resources and Community Development~~ a bond in the amount of five thousand dollars ($5,000) running to the State of North Carolina, conditioned that any well opened by the drilling operator upon abandonment shall be plugged in accordance with the rules of said Department ~~of Natural Resources and Community Development~~."

Sec. 119. G.S. 113-379 reads as rewritten:

"§ *113-379. Filing log of drilling and development of each well.*

Upon the completion or shutting down of any abandoned well, the drilling operator shall file with the Department ~~of Natural Resources and Community Development~~ or other State agency, or with any division thereof hereinafter created for the regulation of drilling for oil

or natural gas, a complete log of the drilling and development of each well."

Sec. 120. G.S. 113-391 reads as rewritten:

"§ *113-391. Jurisdiction and authority ~~of Department of Natural Resources and Community Development~~; rules and orders.*

(a) The Department shall have jurisdiction and authority of and over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas.

(b) The Department shall have the authority and it shall be its duty to make such inquiries as it may think proper to determine whether or not waste over which it has jurisdiction exists or is imminent. In the exercise of such power the Department shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

(c) The Department may make rules and orders as may be necessary from time to time in the proper administration and enforcement of this law, including rules or orders for the following purposes:

(1) To require the drilling, operation, casing and plugging of wells to be done in such manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of freshwater supplies by oil, gas or salt water, or to protect the quality of the water, air, soil or any other environmental resource against injury or damage or impairment; and to require reasonable bond condition for the performance of the duty to plug each dry or abandoned well.

(2) To require directional surveys upon application of any owner who has reason to believe that a well or wells of others has or have been drilled into the lands owned by him or held by him under lease. In the event such surveys are required, the costs thereof shall be borne by the owners making the request.

(3) To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.

(4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities,

and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(5) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.

(6) To prevent 'blow-outs,' 'caving' and 'seepage' in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(7) To prevent fires.

(8) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.

(9) To regulate the 'shooting,' perforating, and chemical treatment of wells.

(10) To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.

(11) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined.

(12) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.

(13) To regulate the spacing of wells and to establish drilling units.

(14) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

(15) To prevent where necessary the use of gas for the manufacture of carbon black.

(16) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil or any other environmental resource against injury, or damage or impairment."

Sec. 121. G.S. 113-415 reads as rewritten:

"*§ 113-415. Conflicting laws.*

No provision of this Article shall be construed to repeal, amend, abridge or otherwise affect the authority and responsibility vested in the ~~North Carolina~~ Environmental Management Commission by Article 7 of Chapter 87, pertaining to the location, construction, repair, operation and abandonment of wells, or the authority or responsibility vested in the Department ~~of Human Resources~~ and the Commission for Health Services by Article ~~13, Chapter 130,~~ 10 of

Chapter 130A of the General Statutes pertaining to public water-supply requirements."

Sec. 122. G.S. 113A-33 reads as rewritten:

"§ *113A-33. Definitions.*

As used in this Article, unless the context requires otherwise:

(1) 'Department' means the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources.

(2) 'Free-flowing,' as applied to any river or section of a river, means existing or flowing in natural condition without substantial impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the North Carolina natural and scenic rivers system shall not automatically bar its consideration for such inclusion: Provided, that this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the system.

(3) 'River' means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(4) 'Road' means public or private highway, hard-surface road, dirt road, or railroad.

(5) 'Scenic easement' means a perpetual easement in land which (i) is held for the benefit of the people of North Carolina, (ii) is specifically enforceable by its holder or beneficiary, and (iii) limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of the land and activities conducted thereon. The object of such limitations and obligations is the maintenance or enhancement of the natural beauty of the land in question or of the areas affected by it.

(6) 'Secretary' means the Secretary of the Department of Environment, Health, and Natural Resources."

Sec. 123. G.S. 113A-36(a) reads as rewritten:

"(a) The Department ~~of Natural Resources and Community Development~~ is the agency of the State of North Carolina with the duties and responsibilities to administer and control the North Carolina natural and scenic rivers system."

Sec. 124. G.S. 113A-42 reads as rewritten:

"§ *113A-42. Violations.*

(a) Civil Action. -- Whoever violates, fails, neglects or refuses to obey any provision of this Article or rule or order of the Secretary ~~of~~

~~Natural Resources and Community Development~~ may be compelled to comply with or obey the same by injunction, mandamus, or other appropriate remedy.

(b) Penalties. -- Whoever violates, fails, neglects or refuses to obey any provision of this Article or ~~regulation~~ rule or order of the Secretary ~~of Natural Resources and Community Development~~ is guilty of a misdemeanor and may be punished by a fine of not more than fifty dollars ($50.00) for each violation, and each day such person shall fail to comply, where feasible, after having been officially notified by the Department shall constitute a separate offense subject to the foregoing penalty."

Sec. 125. G.S. 113A-77 reads as rewritten:

"§ *113A-77. Expenditures authorized.*

The Department ~~of Natural Resources and Community Development~~ is authorized to spend any federal, State, local or private funds available for this purpose to the Department for acquisition and development of the Appalachian Trail System."

Sec. 126. G.S. 113A-103 reads as rewritten:

"§ *113A-103. Definitions.*

As used in this Article:

(1) 'Advisory Council' means the Coastal Resources Advisory Council created by G.S. 113A-105.

(2) 'Coastal area' means the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean (extending offshore to the limits of State jurisdiction, as may be identified by rule of the Commission for purposes of this Article, but in no event less than three geographical miles offshore) or any coastal sound. The Governor, in accordance with the standards set forth in this subdivision and in subdivision (3) of this section, shall designate the counties that constitute the 'coastal area,' as defined by this section, and his designation shall be final and conclusive. On or before May 1, 1974, the Governor shall file copies of a list of said coastal-area counties with the chairmen of the boards of commissioners of each county in the coastal area, with the mayors of each incorporated city within the coastal area (as so defined) having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, and with the Secretary of State. The said coastal-area counties and cities shall thereafter transmit nominations to the Governor of members of the Coastal Resources Commission as provided in G.S.113A-104(d).

(3) 'Coastal sound' means Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds. For purposes of this Article, the inland limits of a sound on a tributary river shall be defined as the limits of seawater encroachment on said tributary river under normal conditions. 'Normal conditions' shall be understood to include regularly occurring conditions of low stream flow and high tide, but shall not include unusual conditions such as those associated with hurricane and other storm tides. Unless otherwise determined by the Commission, the limits of seawater encroachment shall be considered to be the confluence of a sound's tributary river with the river or creek entering it nearest to the farthest inland movement of oceanic salt water under normal conditions. For purposes of this Article, the aforementioned points of confluence with tributary rivers shall include the following:

a. On the Chowan River, its confluence with the Meherrin River;
b. On the Roanoke River, its confluence with the northeast branch of the Cashie River;
c. On the Tar River, its confluence with Tranters Creek;
d. On the Neuse River, its confluence with Swift Creek;
e. On the Trent River, its confluence with Ready Branch.

Provided, however, that no county shall be considered to be within the coastal area which: (i) is adjacent to, adjoining or bounded by any of the above points of confluence and lies entirely west of said point of confluence; or (ii) is not bounded by the Atlantic Ocean and lies entirely west of the westernmost of the above points of confluence.

(4) 'Commission' means the Coastal Resources Commission created by G.S. 113A-104.

(4a) 'Department' means the Department of Environment, Health, and Natural Resources.

(5) a. 'Development' means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom

of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal.

b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:

1. Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing right-of-way;
2. Work by any railroad company or by any utility and other persons engaged in the distribution and transmission of petroleum products, water, telephone or telegraph messages, or electricity for the purpose of inspecting, repairing, maintaining, or upgrading any existing substations, sewers, mains, pipes, cables, utility tunnels, lines, towers, poles, tracks, and the like on any of its existing railroad or utility property or rights-of-way, or the extension of any of the above distribution-related facilities to serve development approved pursuant to G.S. 113A-121 or 113A-122;
3. Work by any utility and other persons for the purpose of construction of facilities for the development, generation, and transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission regulating the siting of such facilities (including environmental aspects of such siting), and work on facilities used directly in connection with the above facilities;
4. The use of any land for the purposes of planting, growing, or harvesting plants, crops, trees, or other agricultural or forestry products, including normal private road construction, raising livestock or poultry, or for other agricultural purposes except where excavation or filling affecting estuarine waters (as defined in G.S. 113-229) or navigable waters is involved;
5. Maintenance or repairs (excluding replacement) necessary to repair damage to structures caused by the elements or to prevent damage to imminently threatened structures by the creation of protective sand dunes.

6. The construction of any accessory building customarily incident to an existing structure if the work does not involve filling, excavation, or the alteration of any sand dune or beach;
7. Completion of any development, not otherwise in violation of law, for which a valid building or zoning permit was issued prior to ratification of this Article and which development was initiated prior to the ratification of this Article;
8. Completion of installation of any utilities or roads or related facilities not otherwise in violation of law, within a subdivision that was duly approved and recorded prior to the ratification of this Article and which installation was initiated prior to the ratification of this Article;
9. Construction or installation of any development, not otherwise in violation of law, for which an application for a building or zoning permit was pending prior to the ratification of this Article and for which a loan commitment (evidenced by a notarized document signed by both parties) had been made prior to the ratification of this Article; provided, said building or zoning application is granted by July 1, 1974;
10. It is the intention of the General Assembly that if the provisions of any of the foregoing subparagraphs 1 to 10 of this paragraph are held invalid as a grant of an exclusive or separate emolument or privilege or as a denial of the equal protection of the laws, within the meaning of Article I, Secs. 19 and 32 of the North Carolina Constitution, the remainder of this Article shall be given effect without the invalid provision or provisions.

c. The Commission shall define by rule (and may revise from time to time) certain classes of minor maintenance and improvements which shall be exempted from the permit requirements of this Article, in addition to the exclusions set forth in paragraph b of this subdivision. In developing such rules the Commission shall consider, with regard to the class or classes of units to be exempted:
   1. The size of the improved or scope of the maintenance work;

2. The location of the improvement or work in proximity to dunes, waters, marshlands, areas of high seismic activity, areas of unstable soils or geologic formations, and areas enumerated in G.S. 113A-113(b)(3); and
3. Whether or nor dredging or filling is involved in the maintenance or improvement.

(6) 'Key facilities' include the site location and the location of major improvement and major access features of key facilities, and mean:

a. Public facilities, as determined by the Commission, on nonfederal lands which tend to induce development and urbanization of more than local impact, including but not limited to:
   1. Any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;
   2. Major interchanges between the interstate highway system and frontage-access streets or highways; major interchanges between other limited-access highways and frontage-access streets or highways;
   3. Major frontage-access streets and highways, both of State concern; and
   4. Major recreational lands and facilities;
b. Major facilities on nonfederal lands for the development, generation, and transmission of energy.

(7) 'Lead regional organizations' means the regional planning agencies created by and representative of the local governments of a multi-county region, and designated as lead regional organizations by the Governor.

(8) 'Local government' means the governing body of any county or city which contains within its boundaries any lands or waters subject to this Article.

(9) 'Person' means any individual, citizen, partnership, corporation, association, organization, business trust, estate, trust, public or municipal corporation, or agency of the State or local government unit, or any other legal entity however designated.

(10) Repealed by Session Laws 1987, c. 827, s. 133.

(11) 'Secretary' means the Secretary of Environment, Health, and Natural Resources, except where otherwise specified in this Article."

Sec. 127. G.S. 113A-105 reads as rewritten:

"§ *113A-105. Coastal Resources Advisory Council.*

(a) Creation. -- There is hereby created and established a council to be known as the Coastal Resources Advisory Council.

(b) The Coastal Resources Advisory Council shall consist of not more than 47 members appointed or designated as follows:

(1) Two individuals designated by the Secretary ~~of Natural Resources and Community Development~~ from among the employees of his Department;

(1a) The Secretary of the Department of Commerce or his designee;

(2) The Secretary of the Department of Administration or his designee;

(3) The Secretary of the Department of Transportation and Highway Safety or his designee, and one additional member selected by him from his Department;

(4) The ~~Secretary of the Department of Human Resources or his designee;~~ State Health Director;

(5) The Commissioner of Agriculture or his designee;

(6) The Secretary of the Department of Cultural Resources or his designee;

(7) One member from each of the four multi-county planning districts of the coastal area to be appointed by the lead regional agency of each district;

(8) One representative from each of the counties in the coastal area to be designated by the respective boards of county commissioners;

(9) No more than eight additional members representative of cities in the coastal area and to be designated by the Commission;

(10) Three members selected by the Commission who are marine scientists or technologists;

(11) One member who is a local health director selected by the Commission upon the recommendation of the ~~Secretary of Human Resources~~ Secretary.

(c) Functions and Duties. -- The Advisory Council shall assist the ~~Secretaries of Administration and of Natural Resources and Community Development~~ Secretary and the Secretary of Administration in an advisory capacity:

(1) On matters which may be submitted to it by either of them or by the Commission, including technical questions relating to the development of ~~rules and regulations,~~ rules, and

(2) On such other matters arising under this Article as the Council considers appropriate.

(d) Multiple Offices. -- Membership on the Coastal Resources Advisory Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) Chairman and Vice-Chairman. -- A chairman and vice-chairman shall be elected annually by the Council.

(f) Compensation. -- The members of the Advisory Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5."

Sec. 128. G.S. 113A-113(b) as amended by Section 1 of Chapter 217 of the 1989 Session Laws reads as rewritten:

"(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:

(1) Coastal wetlands as defined in G.S. 113-229(n)(3) and contiguous areas necessary to protect those wetlands;

(2) Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of ~~Natural Resources and Community Development;~~ Environment, Health, and Natural Resources;

(3) Renewable resource areas where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could jeopardize future water, food or fiber requirements of more than local concern, which may include:

a. Watersheds or aquifers that are present sources of public water supply, as identified by the Department ~~of Human Resources~~ or the Environmental Management Commission, or that are classified for water-supply use pursuant to G.S. 143-214.1;

b. Capacity use areas that have been declared by the Environmental Management Commission pursuant to G.S. 143-215.13(c) and areas wherein said Environmental Management Commission (pursuant to G.S. 143-215.3(d) or G.S. 143-215.3(a)(8)) has determined that a generalized condition of water depletion or water or air pollution exists;

c. Prime forestry land (sites capable of producing 85 cubic feet per acre-year, or more, of marketable timber), as identified by the ~~Department of Natural Resources and Community Development.~~ Department.

(4) Fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific or scenic values or natural systems, which may include:

a. Existing national or State parks or forests, wilderness areas, the State Nature and Historic Preserve, or public recreation areas; existing sites that have been acquired for any of the same, as identified by the ~~Secretary of Natural Resources and Community Development;~~ Secretary; and proposed sites for any of the same, as identified by the ~~Secretary of Natural Resources and Community Development.~~ Secretary, provided that the proposed site has been formally designated for acquisition by the governmental agency having jurisdiction;

b. Present sections of the natural and scenic rivers system;

c. Stream segments that have been classified for scientific or research uses by the Environmental Management Commission, or that are proposed to be so classified in a proceeding that is pending before said Environmental Management Commission pursuant to G.S. 143-214.1 at the time of the designation of the area of environmental concern;

d. Existing wildlife refuges, preserves or management areas, and proposed sites for the same, as identified by the Wildlife Resources Commission, provided that the proposed site has been formally designated for acquisition (as hereinafter defined) or for inclusion in a cooperative agreement by the governmental agency having jurisdiction;

e. Complex natural areas surrounded by modified landscapes that do not drastically alter the landscape, such as virgin forest stands within a commercially managed forest, or bogs in an urban complex;

f. Areas that sustain remnant species or aberrations in the landscape produced by natural forces, such as rare and endangered botanical or animal species;

g. Areas containing unique geological formations, as identified by the State Geologist; and

h. Historic places that are listed, or have been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966; historical, archaeological, and other places and properties owned, managed or assisted by the State of North Carolina pursuant to Chapter 121; and properties or areas that are or may be designated by the Secretary of the Interior as registered natural landmarks or as national historic landmarks;

(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;

(6) Natural-hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water, which may include:

a. Sand dunes along the Outer Banks;

b. Ocean and estuarine beaches and the shoreline of estuarine and public trust waters;

c. Floodways and floodplains;

d. Areas where geologic and soil conditions are such that there is a substantial possibility of excessive erosion or seismic activity, as identified by the State Geologist;

e. Areas with a significant potential for air inversions, as identified by the Environmental Management Commission.

(7) Areas which are or may be impacted by key facilities.

(8) Outstanding Resource Waters as designated by the Environmental Management Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary for the purpose of maintaining the exceptional water quality and outstanding resource values identified in the designation.

(9) Primary Nursery Areas as designated by the Marine Fisheries Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary to protect the resource values identified in the designation

including, but not limited to, those values contributing to the continued productivity of estuarine and marine fisheries and thereby promoting the public health, safety and welfare."

Sec. 129. G.S. 113A-116 reads as rewritten:

"§ *113A-116. Local government letter of intent.*

Within two years after July 1, 1974, each county and city within the coastal area shall submit to the Commission a written statement of its intent to act, or not to act, as a permit-letting agency under G.S. 113A-121. If any city or county states its intent not to act as a permit-letting agency or fails to submit a statement of intent within the required period, the Secretary ~~of Natural Resources and Community Development~~ shall issue permits therein under G.S. 113A-121; provided that a county may submit a letter of intent to issue permits in any city within said county that disclaims its intent to issue permits or fails to submit a letter of intent. Provided, however, should any city or county fail to become a permit-letting agency for any reason, but shall later express its desire to do so, it shall be permitted by the Coastal Resources Commission to qualify as such an agency by following the procedure herein set forth for qualification in the first instance."

Sec. 130. G.S. 113A-117(a) reads as rewritten:

"(a) The Secretary ~~of Natural Resources and Community Development~~ shall develop and present to the Commission for consideration and to all cities and counties and lead regional organizations within the coastal area for comment a set of criteria for local implementation and enforcement programs. In the preparation of such criteria, the Secretary shall emphasize the necessity for the expeditious processing of permit applications. Said criteria may contain recommendations and guidelines as to the procedures to be followed in developing local implementation and enforcement programs, the scope and coverage of said programs, minimum standards to be prescribed in said programs, staffing of permit-letting agencies, permit-letting procedures, and priorities of regional or statewide concern. Within 20 months after July 1, 1974, the Commission shall adopt and transmit said criteria (with any revisions) to each coastal-area county and city that has filed an applicable letter of intent, for its guidance."

Sec. 131. G.S. 113A-118 reads as rewritten:

"§ *113A-118. Permit required.*

(a) After the date designated by the Secretary ~~of Natural Resources and Community Development~~ pursuant to G.S. 113A-125, every person before undertaking any development in any area of environmental concern shall obtain (in addition to any other required State or local permit) a permit pursuant to the provisions of this Part.

(b) Under the expedited procedure provided for by G.S. 113A-121, the permit shall be obtained from the appropriate city or county for any minor development; provided, that if the city or county has not developed an approved implementation and enforcement program, the permit shall be obtained from the Secretary ~~of Natural Resources and Community Development~~.

(c) Permits shall be obtained from the Commission or its duly authorized agent.

(d) Within the meaning of this Part:

(1) A 'major development' is any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, ~~the Department of Human Resources,~~ the ~~State~~ Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources, the ~~State~~ Department of Administration, the North Carolina Mining Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Board, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

(2) A 'minor development' is any development other than a 'major development.'

(e) If, within the meaning of G.S. 113A-103(5)b3, the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county.

(f) The Secretary ~~of the Department of Natural Resources and Community Development~~ may issue special emergency permits under this Article. These permits may only be issued in those extraordinary situations in which life or structural property is in imminent danger as a result of storms, sudden failure of man-made structures, or similar occurrence. These permits may carry any conditions necessary to protect the public interest, consistent with the emergency situation and the impact of the proposed development. If an application for an emergency permit includes work beyond that necessary to reduce imminent dangers to life or property, the emergency permit shall be limited to that development reasonably necessary to reduce the imminent danger; all further development shall be considered under ordinary permit procedures. This emergency permit authority of the

Secretary shall extend to all development in areas of environmental concern, whether major or minor development, and the mandatory notice provisions of G.S. 113A-119(b) shall not apply to these emergency permits. To the extent feasible, these emergency permits shall be coordinated with any emergency permits required under G.S. 113-229(e1)."

Sec. 132. G.S. 113A-119(a) reads as rewritten:

"(a) Any person required to obtain a permit under this Part shall file with the Secretary ~~of Natural Resources and Community Development~~ and (in the case of a permit sought from a city or county) with the designated local official an application for a permit in accordance with the form and content designated by the Secretary and approved by the Commission. The applicant must submit with the application a check or money order payable to the Department or the city or county, as the case may be, constituting a reasonable fee (not to exceed twenty-five dollars ($25.00) for a minor development permit and not to exceed one hundred dollars ($100.00) for a major development permit) set by the Commission to cover the administrative costs in processing the said application."

Sec. 133. G.S. 113A-121(b) reads as rewritten:

"(b) In cities and counties that have developed approved implementation and enforcement programs, applications for permits for minor developments shall be considered and determined by the designated local official of the city or county as the case may be. In cities and counties that have not developed approved implementation and enforcement programs, such applications shall be considered and determined by the Secretary ~~of Natural Resources and Community Development~~. Minor development projects proposed to be undertaken by a local government within its own permit-letting jurisdiction shall be considered and determined by the Secretary ~~of Natural Resources and Community Development~~."

Sec. 134. G.S. 113A-123(b) reads as rewritten:

"(b) Any person having a recorded interest or interest by operation of law in or registered claim to land within an area of environmental concern affected by any final decision or order of the Commission under this Part may, within 90 days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, or an interest, therein, and in case he is adjudged the owner of the subject land, or an interest therein, the court shall determine whether such order so restricts the use of his property as to deprive him of the practical uses thereof, being not otherwise authorized by law, and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of taking without compensation. The burden of proof shall be on

petitioner as to ownership and the burden of proof shall be on the Commission to prove that the order is not an unreasonable exercise of the police power, as aforesaid. Either party shall be entitled to a jury trial on all issues of fact, and the court shall enter a judgment in accordance with the issues, as to whether the Commission order shall apply to the land of the petitioner. The Secretary ~~of Natural Resources and Community Development~~ shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this subsection for the determination of the issue of whether such order constitutes a taking without compensation shall be exclusive and such issue shall not be determined in any other proceeding. Any action authorized by this subsection shall be calendared for trial at the next civil session of superior court after the summons and complaint have been served for 30 days, regardless of whether issues were joined more than 10 days before the session. It is the duty of the presiding judge to expedite the trial of these actions and to give them a preemptory setting over all others, civil or criminal. From any decision of the superior court either party may appeal to the court of appeals as a matter of right."

Sec. 135. G.S. 113A-124 reads as rewritten:

"§ *113A-124. Additional powers and duties.*

(a) The Secretary ~~of Natural Resources and Community Development~~ shall have the following additional powers and duties under this Article:

(1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.

(2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.

(3) To keep a list of interested persons who wish to be notified of proposed developments and proposed rules designating areas of environmental concern and to so notify these persons of such proposed developments by regular mail. A reasonable registration fee to defray the cost of handling and mailing notices may be charged to any person who so registers with the Commission.

(4) To propose rules to implement this Article for consideration by the Commission.

(5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department ~~of~~

~~Natural Resources and Community Development~~ or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental rules.

(6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department ~~of Natural Resources and Community Development~~. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the secretaries of Administration and of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State personnel rules and budgetary laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said secretaries may contract with any local governmental unit or lead regional organization to carry out the planning provisions of this Article.

(c) The Commission shall have the following additional powers and duties under this Article:

(1) To recommend to the Secretary ~~of Natural Resources and Community Development~~ the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.

(2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.

(3) To hold such public hearings as the Commission deems appropriate.

(4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department ~~of Natural Resources and Community Development~~. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.

(5) Repealed by Session Laws 1987, c. 827, s. 141.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the

Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission."

Sec. 136. G.S. 113A-134.2 reads as rewritten:

"§ *113A-134.2. Creation of program; administration; purpose.*

(a) There is created the Coastal and Estuarine Water Beach Access Program, to be administered by the Coastal Resources Commission and the ~~Department of Natural Resources and Community Development.~~ Department, for the purpose of acquiring, improving and maintaining property along the Atlantic Ocean and estuarine waters, as provided in this Article.

(b) The Coastal Resources Commission and the Department ~~of Natural Resources and Community Development~~ shall use the definition of 'estuarine water' used under this Article ~~7 of this Chapter~~ to administer this program."

Sec. 137. G.S. 113A-134.3 reads as rewritten:

"§ *113A-134.3. Standards for beach access program.*

The Coastal Resources Commission, with the support of the ~~Department of Natural Resources and Community Development,~~ Department, shall establish and carry out a program to assure the acquisition, improvement and maintenance of a system of public access to ocean and estuarine water beaches. This beach access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of said property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands which, due to adverse effects of coastal and estuarine water natural hazards, such as past and potential erosion, flooding and storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules adopted pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all areas of the North Carolina coast and estuarine waters where access is compatible with the natural resources involved and where reasonable access is not already available as of June 30, 1981. To the maximum extent possible, this program shall be coordinated with State and local coastal and estuarine water management and recreational programs and carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary ~~of Natural Resources and Community Development~~ or his designee shall make a written finding of the public purpose to be served by the acquisition. Once property is purchased, the Department ~~of Natural Resources and Community Development~~ may allow property, without charge, to be

controlled and operated by the county or municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose. These funds may be used to meet matching requirements for federal or other funds. The Department ~~of Natural Resources and Community Development~~ shall make every effort to obtain funds from sources other than the general fund for these purposes. Funds may be used to acquire or develop land for pedestrian access including parking or to make grants to local governments to accomplish the purposes of this Article. All acquisitions or dispositions of property made pursuant to this Article shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this Article for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach access."

Sec. 138. G.S. 113A-168 reads as rewritten:

"§ *113A-168. Removal, etc., of unlawful advertising.*

Any outdoor advertising erected or established after May 26, 1975, in violation of the provisions of this Article shall be unlawful and shall constitute a nuisance. The Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources shall give 30 days' notice by certified mail to the owner of the nonconforming outdoor advertising structure, if such owner is known or can by reasonable diligence be ascertained, to move the outdoor advertising structure or to make it conform to the provisions of this Article and rules ~~and regulations~~ promulgated by the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources hereunder. The Department ~~of Natural Resources and Community Development~~ or its agents shall have the right to remove or contract to have removed the nonconforming outdoor advertising at the expense of the said owner if the said owner fails to act within 30 days after receipt of such notice. The Department ~~of Natural Resources and Community Development~~ or its agents or contractor and his employees may enter upon private property for the purpose of removing outdoor advertising prohibited by this Article or its implementing rules without civil or criminal liability."

Sec. 139. G.S. 120-70.42 reads as rewritten:

"§ *120-70.42. Membership; cochairmen; vacancies; quorum.*

The Environmental Review Commission shall consist of five Senators appointed by the President of the ~~Senate and~~ Senate, the Chairman of the Senate Committee on Environment and Natural

Resources, five Representatives appointed by the Speaker of the House of ~~Representatives~~ Representatives, and the Chair of the House of Representatives Committee on Basic Resources who shall serve at the pleasure of their appointing officer. The President of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. Any vacancy which occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment. A quorum of the Environmental Review Commission shall consist of ~~six~~ seven members."

Sec. 140. G.S. 120-123(23) reads as rewritten:

"(23) The Governor's Waste Management Board, as established by ~~G.S. 143B-216.12.~~ G.S. 143B-285.12."

Sec. 141. G.S. 130A-2 reads as rewritten:

"§ *130A-2. Definitions.*

The following definitions shall apply throughout this Chapter unless otherwise specified:

(1) 'Commission' means the Commission for Health Services.

(2) 'Department' means the Department ~~for Human Resources~~ of Environment, Health, and Natural Resources.

(3) 'Imminent hazard' means a situation which is likely to cause an immediate threat to life or a serious risk of irreparable damage to the environment if no immediate action is taken.

(4) 'Local board of health' means a district board of health or a county board of health.

(5) 'Local health department' means a district health department or a county health department.

(6) 'Local health director' means the administrative head of a local health department appointed pursuant to this Chapter.

(7) 'Person' means an individual, corporation, company, association, partnership, unit of local government or other legal entity.

(8) 'Secretary' means the Secretary of the Department of ~~Human Resources~~ Environment, Health, and Natural Resources.

(9) 'Unit of local government' means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.

(10) 'Vital records' means birth, death, fetal death, marriage, annulment and divorce records registered under the provisions of Article 4 of this Chapter."

Sec. 142. G.S. 130A-231 reads as rewritten:

"§ *130A-231. Agreements between ~~Department of Human Resources and Department of Natural Resources and Community Development~~ the State Health Director and the Division of Marine Fisheries.*

Nothing in this Part is intended to limit the authority of the Division of Marine Fisheries of the Department ~~of Natural Resources and Community Development~~ to regulate aspects of the harvesting, processing and handling of scallops, shellfish and crustacea relating to conservation of the fisheries resources of the State. The ~~Department of Human Resources~~ State Health Director and the ~~Department of Natural Resources and Community Development~~ Division of Marine Fisheries are authorized to enter into agreements respecting the duties and responsibilities of each agency as to the harvesting, processing and handling of scallops, shellfish and crustacea."

Sec. 143. G.S. 130A-235 reads as rewritten:

"§ *130A-235. Regulation of sanitation in institutions.*

For protection of the public health, the Commission shall adopt rules to establish sanitation requirements for all institutions and facilities at which individuals are provided room or board and for which a license to operate is required to be obtained or a certificate for payment is obtained from the ~~Department.~~ Department of Human Resources. The rules shall also apply to facilities that provide room and board to individuals but are exempt from licensure under G.S. 131D-10.4(1). No other State agency may adopt rules to establish sanitation requirements for these institutions and facilities. The Department of Human Resources shall issue a license to operate or a certificate for payment to such an institution or facility only upon compliance with all applicable sanitation rules of the Commission, and the Department of Human Resources may suspend or revoke a license or a certificate for payment for violation of these rules. In adopting rules pursuant to this section, the Commission shall define categories of standards to which such institutions and facilities shall be subject and shall establish criteria for the placement of any such institution or facility into one of the categories. This section shall not apply to State institutions and facilities subject to inspection under G.S. 130A-5(10)."

Sec. 144. G.S. 130A-291 reads as rewritten:

"§ *130A-291. Solid Waste Unit in Department ~~of Human Resources~~.*

(a) For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creation of nuisances and the depletion of our natural resources, the Department ~~of Human Resources~~ shall maintain an appropriate administrative unit to promote sanitary processing, treatment, disposal, and statewide management of solid waste and the greatest possible recycling and recovery of resources, and the Department shall employ

and retain such qualified personnel as may be necessary to effect such purposes. It is the purpose and intent of the State to be and remain cognizant not only of its responsibility to authorize and establish the statewide solid waste management program, but also of its responsibility to monitor and supervise, through the Department ~~of Human Resources~~, the activities and operations of units of local government implementing a permitted solid waste management facility serving a specified geographic area in accordance with a solid waste management plan.

(b) In furtherance of said purpose and intent, it is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that solid waste management facilities permitted hereunder and serving a specified geographic area shall be used by public or private owners or occupants of all lands, buildings, and premises within said area, and a unit of local government may, by ordinance, require that all solid waste generated within said area and placed in the waste stream for disposal, shall be delivered to the permitted solid waste management facility or facilities serving such geographic area. Actions taken pursuant to this Article shall be deemed to be acts of the sovereign power of the State of North Carolina, and to the extent reasonably necessary to achieve the purposes of this section, a unit of local government may displace competition with public service for solid waste management and disposal. It is further determined and declared that no person, firm, corporation, association or entity within said geographic area shall engage in any activities which would be competitive with this purpose or with ordinances, rules ~~or regulations~~ adopted pursuant to the authority granted herein."

Sec. 145. G.S. 130A-310.3 reads as rewritten:

"§ *130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.*

(a) The Secretary may issue a written declaration, based upon findings of fact, that an inactive hazardous substance or waste disposal site endangers the public health or the environment. After issuing such a declaration, and at any time during which the declaration is in effect, the Secretary shall be responsible for:

(1) Monitoring the inactive hazardous substance or waste disposal site;

(2) Developing a plan for public notice and for community and local government participation in any inactive hazardous substance or waste disposal site remedial action program to be undertaken;

(3) Approving an inactive hazardous substance or waste disposal site remedial action program for the site;

(4) Coordinating the inactive hazardous substance or waste disposal site remedial action program for the site; and

(5) Ensuring that the hazardous substance or waste disposal site remedial action program is completed.

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that ~~the Secretary of Natural Resources and Community Development, or~~ the Environmental Management Commission, ~~or~~ the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

(c) Whenever the Secretary has issued such a declaration, and at any time during which the declaration is in effect, the Secretary may, in addition to any other powers he may have, order any responsible party:

(1) To develop an inactive hazardous substance or waste disposal site remedial action program for the site subject to approval by the Department, and

(2) To implement the program within reasonable time limits specified in the order.

Written notice of such an order shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing in the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall be given as provided in G.S. 1A-1, Rule 4(j).

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and shall seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall ~~consult with the Secretary of Natural Resources and Community Development to~~ assure concurrent compliance with applicable standards set by the Environmental Management Commission."

Sec. 146. G.S. 130A-325 reads as rewritten:

"§ *130A-325. Prohibited acts.*

The following acts are prohibited:

(1) Failure by a supplier of water to comply with this Article, an order issued under this Article, or the drinking water rules;

(2) Failure by a supplier of water to comply with the requirements of G.S. 130A-324 or the dissemination by a supplier of any false or misleading information with respect to remedial actions being undertaken to achieve compliance with the drinking water rules;

(3) Refusal by a supplier of water to allow the Department or local health department to inspect a public water system as provided for in G.S. 130A-17;

(4) The willful defiling by any person of any water supply of a public water system or the willful damaging of any pipe or other part of a public water system;

(5) The discharge by any person of sewage or other waste above the intake of a public water system, unless the sewage or waste has been passed through a system of purification approved by the Department ~~and the Department of Natural Resources and Community Development~~; and

(6) The failure by a person to maintain a system approved by the Department for collecting and disposing of all accumulations of human excrement located on the watershed of a public water system."

Sec. 147. G.S. 130A-335(b) reads as rewritten:

"(b) Any public or community sanitary sewage system and any sanitary sewage system which is designed to discharge effluent to the land surface or surface waters shall be approved by the Department ~~of Natural Resources and Community Development~~ under rules adopted by the Environmental Management Commission. All other sanitary sewage systems shall be approved by the Department ~~of Human Resources~~ under rules adopted by the Commission for Health Services."

Sec. 148. G.S. 130A-423(d) reads as rewritten:

"(d) (For effective date see note) If any action is brought against a vaccine manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the plaintiff in the action may recover damages only to the extent permitted by subdivisions (1) through (3) of subsection (a) of G.S. 130A-427. The aggregate amount awarded in any such action may not exceed the limitation established by subsection (b) of G.S. 130A-427. Regardless of whether such an action is brought against a vaccine manufacturer, a claimant who has filed an election pursuant to Section 2121 of the Public Health Service Act, as enacted into federal law by Public Law 99-660, permitting such a claimant to file a civil action for damages for a vaccine-related injury or death, or who is otherwise permitted by federal law to file an action against a vaccine manufacturer, may file a petition pursuant to G.S. 130A-425 to obtain

services from the Department and the Department of Human Resources pursuant to subdivision (5) of subsection (a) of G.S. 130A-427 and, if no action has been brought against a vaccine manufacturer, to obtain other relief available pursuant to G.S. 130A-427."

Sec. 149. G.S. 130A-423(e) reads as rewritten:

"(e) (For effective date see note) In order to prevent recovery of duplicate damages, or the imposition of duplicate liability, in the event that an individual seeks an award pursuant to G.S. 130A-427 and also files suit against the manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the following provisions shall apply:

(1) If, at the time an award is made pursuant to G.S. 130A-427, an individual has already recovered damages from a manufacturer pursuant to a judgment or settlement, the award shall consist only of a commitment to provide services pursuant to subdivision (5) of subsection (a) of G.S. 130A-427.

(2) If, at any time after an award is made to a claimant pursuant to G.S. 130A-427, an individual recovers damages for the same vaccine-related injury from a manufacturer pursuant to a judgment or settlement, the individual who recovers the damages shall reimburse the State for all amounts previously recovered from the State in the prior proceeding. Before a defendant in any action for a vaccine-related injury pays any amount to a plaintiff to discharge a judgment or settlement, he shall request from the Secretary and the Secretary of Human Resources a statement itemizing any reimbursement owed by the plaintiff pursuant to this subdivision, and, if ~~the~~ any reimbursement is owed by the ~~plaintiff,~~ plaintiff to either department, the defendant shall pay the reimbursable amounts, as determined by ~~the~~ each Secretary, directly to ~~the Department of Human Resources.~~ the department to which such reimbursement is owed. This payment shall discharge the plaintiff's obligations to the State under this subdivision and any obligation the defendant may have to the plaintiff with respect to these amounts.

(3) If:

a. An award has been made to a claimant for an element of damages pursuant to G.S. 130A-427; and

b. An individual has recovered for the same element of damages pursuant to a judgment in, or settlement of, an action for the same vaccine-related injury brought against a manufacturer, and that amount has not been remitted

to the State pursuant to subdivision (2) of this subsection; and

c. The State seeks to recover the amounts it paid in an action it brings against the manufacturer pursuant to G.S. 130A-430;

any judgment obtained by the State under G.S. 130A-430 shall be reduced by the amount necessary to prevent the double recovery of any element of damages from the manufacturer. Nothing in this subdivision limits the State's right to obtain reimbursement from a claimant under subdivision (2) of this subsection with respect to any double payment that might be received by the claimant."

Sec. 150. G.S. 130A-425 reads as rewritten:

"*§ 130A-425. Filing of claims.*

(a) Notwithstanding any other provision of State law, no action for compensation for a vaccine-related injury may be filed against any person unless that person was named as a respondent in a claim filed pursuant to this section and unless the claim was filed within the applicable time period set forth in G.S. 130A-429.

(b) In all claims filed pursuant to this Article, the claimant or the person in whose behalf the claim is made shall file with the Commission a verified petition in duplicate, setting forth the following information:

(1) The name and address of the claimant;
(2) The name and address of each respondent;
(3) The amount of compensation in money and services sought to be recovered;
(4) The time and place where the injury occurred;
(5) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim; and
(6) Supporting documentation and a statement of the claim that the claimant or the person in whose behalf the claim is made suffered a vaccine-related injury and has not previously collected an award or settlement of a civil action for damages for this injury. This supporting documentation shall include all available medical records pertaining to the alleged injury, including autopsy reports, if any, and if the injured person was under two years of age at the time of injury, all prenatal, obstetrical, and pediatric records of care preceding the injury, and an identification of any unavailable records known to the claimant or the person in whose behalf the claim is made.

(c) Upon receipt of this verified petition in duplicate, the Commission shall enter the case upon its hearing docket and shall

determine the matter in the county where the injury occurred unless the parties agree or the Commission directs that the case may be heard in some other county. All parties shall be given reasonable notice of the date when and the place where the claim will be heard. Immediately upon receipt of the claim, the Commission shall serve a copy of the verified petition on each respondent by registered or certified mail. The Commission shall also send a copy of the verified petition to the ~~Secretary of Human Resources,~~ Secretary, who shall be a party to all proceedings involving the claim, and to the Attorney General who shall represent the State's interest in all the proceedings involving the claim.

(d) The Commission shall adopt rules necessary to govern the proceedings required by this Article. The Rules of Civil Procedure as contained in G.S. 1A-1 **et seq.** and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 apply to claims filed with the Industrial Commission under this Article. The Commission shall keep a record of all proceedings conducted under this Article, and has the right to subpoena any persons and records it considers necessary in making its determinations. The Commission may require all persons called as witnesses to testify under oath or affirmation, and any member of the Commission may administer oaths. If any persons refuse to comply with any subpoena issued pursuant to this Article or to testify with respect to any matter relevant to proceedings conducted under this Article, the Superior Court of Wake County, on application of the Commission, may issue an order requiring the person to comply with the subpoena and to testify. Any failure to obey any such order may be punished by the court as for contempt."

Sec. 151. G.S. 130A-427 reads as rewritten:

"*§ 130A-427. Commission awards for vaccine-related injuries; duties of Secretary ~~of Human Resources~~.*

(a) Upon determining that a claimant has sustained a vaccine-related injury, the Commission shall make an award providing compensation or services for any or all of the following:

(1) Actual and projected reasonable expenses of medical care, developmental evaluation, special education, vocational training, physical, emotional or behavioral therapy, and residential and custodial care and service expenses, that cannot be provided by the Department and the Department of Human Resources pursuant to subdivision (5) of this subsection;

(2) Loss of earnings and projected earnings, determined in accordance with generally accepted actuarial principles;

(3) Noneconomic, general damages arising from pain, suffering, and emotional distress;

(4) Reasonable attorneys fees;

(5) Needs that the Secretary and the Secretary of Human Resources determines on a case-by-case basis shall be met by medical, health, developmental evaluation, special education, vocational training, physical, emotional, or behavioral therapy, residential and custodial care, and other essential and necessary services, to be provided the injured party by the programs and services administered by the Department and the Department of Human Resources. The Secretary and the Secretary of Human Resources shall develop an itemized list of the service needs of the injured party upon review and evaluation of the injured party's medical record and shall present it to the Commission prior to the Commission's determination. In the event that the Commission's award includes the provision of any of these services, the Secretary and the Secretary of Human Resources shall develop a comprehensive, coordinated plan for the delivery of these services to the injured party. Notwithstanding any other provision of State law, the Secretary and the Secretary of Human Resources shall waive all eligibility criteria in determining eligibility for services provided by the Department and the Department of Human Resources under the plan of care developed pursuant to this subdivision. If the award includes any such services, these services shall be provided by the Department and the Department of Human Resources free of any cost to the injured party.

(b) The money compensation component of the award may not be made pursuant to this section in excess of an aggregate amount of the present day value amount of three hundred thousand dollars ($300,000) with respect to all injuries claimed to have resulted from the administration of a covered vaccine to a single individual. The value of all services to be provided by the Department and the Department of Human Resources, as part of this award is in addition to the total amount of money compensation, and is not included in the limitation prescribed by this subsection on the amount of money compensation that may be awarded. No damages may be awarded pursuant to subdivision (a)(3) on behalf of any person to whom the covered vaccine was not administered."

Sec. 152. G.S. 130A-430 reads as rewritten:

"*§ 130A-430. Right of State to bring action against health care provider and of manufacturer.*

(a) If the Industrial Commission makes an award for a claimant who it determines has sustained a vaccine-related injury, the State may, within two years of the date the Commission renders its decision, bring an action against the health care provider who administered the vaccine on the ground that the health care provider was negligent in administering the vaccine. Damages in an action brought under this section are limited to the amount of the award made by the Commission plus the estimated present value of all the services to be provided to the claimant by the Department and the Department of Human Resources under G.S. 130A-427.

(b) Manufacturer. If the Industrial Commission makes an award for a claimant who it determines has sustained a vaccine-related injury, the State may, within two years of the date the Commission renders its decision, bring an action against the manufacturer who made the vaccine on the ground that the vaccine was a defective product. Damages in an action brought under this section are limited to the amount of the award made by the Commission plus the estimated present value of all the services to be provided to the claimant by the Department and the Department of Human Resources under G.S. 130A-427, the reasonable costs of prosecuting the action, including, but not limited to, attorneys fees, fees charged by witnesses, and costs of exhibits. For purposes of this subsection, a defective product is a covered vaccine that was manufactured, transported, or stored in a negligent manner, or was distributed after its expiration date, or that otherwise violated the applicable requirements of any license, approval, or permit, or any applicable standards or requirements issued under Section 351 of the Public Health Service Act, as amended, or the federal Food, Drug, and Cosmetic Act, as these standards or requirements were interpreted or applied by the federal agency charged with their enforcement. The negligence or other action in violation of applicable federal standards or requirements shall be demonstrated by the State, by a preponderance of the evidence, to be the proximate cause of the injury for which an award was rendered pursuant to G.S. 130A-427, in order to allow recovery by the State against the manufacturer pursuant to this subsection."

Sec. 153. G.S. 130A-433 reads as rewritten:

"*§ 130A-433. Contracts for purchase of vaccines; distribution; fee; rules.*

Notwithstanding any law to the contrary, the Secretary ~~of Human Resources~~ may enter into contracts with the manufacturers and suppliers of covered vaccines and with other public entities either within or without the State for the purchase of covered vaccines and may provide for the distribution or sale of the covered vaccines to health care providers. Local health departments shall distribute the

covered vaccines at the request of the Department ~~of Human Resources~~. The Secretary may charge a fee for providing a covered vaccine to a health care provider. The fee shall be set at an amount that covers the cost of the vaccine to the Department, plus the cost to the Department of storing and distributing the vaccine. The Secretary shall adopt rules to implement this Article.

A health care provider who receives vaccine from the State may charge no more than the cost of the vaccine and a reasonable fee for the administration of the vaccine. Vaccines provided by the State to local health departments for administration shall be administered at no cost to the patient."

Sec. 154. G.S. 130A-434 reads as rewritten:

"§ *130A-434. Child Vaccine Injury Compensation Fund established; payments from Fund; transfer of appropriations and receipts.*

(a) There is established the Child Vaccine Injury Compensation Fund within the Department ~~of Human Resources~~ to finance the North Carolina Childhood Vaccine-Related Injury Compensation Program created by this article. The money compensation components of all awards made pursuant to Article 17 of Chapter 130A of the General Statutes shall be paid by the Department ~~of Human Resources~~ from the Fund.

(b) Should the Department ~~of Human Resources~~ find that the sum of appropriations and receipts is insufficient to meet financial obligations incurred ~~by the Department~~ in the administration of this article, ~~the Department may transfer~~ appropriations and receipts in the Department and in the Department of Human Resources which would otherwise revert to the General Fund may be transferred to the Child Vaccine Injury Compensation Fund in order to meet such obligations. The Department ~~of Human Resources~~ may also budget anticipated receipts as needed to implement this article."

Sec. 155. G.S. 130A-440(c) reads as rewritten:

"(c) The health assessment shall be conducted by a physician licensed to practice medicine, a physician's assistant as defined in G.S. 90-18.1(a), a certified nurse practitioner, or a public health nurse meeting the ~~North Carolina Division of Health Services'~~ Department's Standards for Early Periodic Screening, Diagnosis, and Treatment Screening."

Sec. 156. G.S. 130A-441 reads as rewritten:

"§ *130A-441. Reporting.*

(a) Health assessment results shall be submitted to the school principal by the medical provider on forms developed by the Department ~~of Human Resources~~ and the Department of Public Instruction.

~~(a)~~ (b) Each school having a kindergarten shall maintain on file the health assessment results. The files shall be open to inspection by the ~~Department of Human Resources, the Department of Public Instruction~~ Department, the Department of Public Instruction, or their authorized representatives and persons inspecting the files shall maintain the confidentiality of the files. Upon transfer of a child to another kindergarten, a copy of the health assessment results shall be provided upon request and without charge to the new kindergarten.

~~(b)~~ (c) Within 90 days after the commencement of a new school year, the principal shall file a health assessment status report with the Department of Public Instruction on forms developed by the Department ~~of Human Resources~~ and the Department of Public Instruction. The report shall document the number of children in compliance and not in compliance with G.S. 130A-440(a)."

Sec. 157. G.S. 143-138(b) as amended by Section 2 of Chapter 681 of the 1989 Session Laws reads as rewritten:

"(b) Contents of the Code. -- The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; ~~regulations~~ rules governing construction and precautions to be taken during construction; ~~regulations~~ rules as to permissible materials, loads, and stresses; ~~regulations of~~ rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; ~~regulations~~ rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules ~~and regulations~~ pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e).

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building ~~regulations~~ rules applicable to farm buildings located outside the ~~building-regulation~~ building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any ~~boiler regulations~~ rules governing boilers adopted by the Board of Boiler ~~Rules,~~ and Pressure Vessels Rules,

(2) Any ~~elevator regulations~~ rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any ~~regulations~~ rules relating to sanitation adopted by the ~~Department of Human Resources~~ Commission for Health Services or the Department of Environment, Health, and Natural Resources which the Building Code Council believes pertinent.

In addition, the Code may include references to such other ~~regulations~~ rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No ~~regulations~~ rule issued by ~~other agencies~~ any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S.

62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain ~~regulations~~ rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements."

Sec. 158. G.S. 143-138(g) as amended by Section 18 of Chapter 681 of the 1989 Session Laws is amended by inserting, after the line beginning "Commissioner of Insurance", a new line to read "Department of Environment, Health, and Natural Resources 1".

Sec. 159. G.S. 143-214.6(b) as enacted by Section 2 of Chapter 426 of the 1989 Session Laws reads as rewritten:

"(b) Membership. -- The Council shall consist of not more than 20 members appointed or designated as follows:

(1) The Secretary or his designee;

(2) The Secretary of Transportation or his designee;

~~(3) The Secretary of Human Resources or his designee;~~

(4) The Commissioner of Agriculture or his designee;

(5) One member each from two different lead regional organizations to be appointed by the Commission from nominations submitted by lead regional organizations;

(6) Three representatives of county government, one to be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, one to be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, and one to be appointed by the Commission, from three lists of three nominees each submitted by the North Carolina Association of County Commissioners;

(7) Three representatives of municipal government, one to be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, one to be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, and one to be appointed by the Commission, from three lists of three nominees each submitted by the North Carolina League of Municipalities;

(8) One member appointed by the Commission who has technical or professional expertise in the area of land use planning;

(9) One member who is a local health director appointed by the Commission upon recommendation of the ~~Secretary of Human Resources;~~ Secretary;

(10) Two members appointed by the Commission who shall be actively involved with or have had extensive experience in the field of land development upon the recommendation of the North Carolina Home Builders Association;

(11) One member appointed by the Commission who has technical or professional expertise in the area of water resources;

(12) One soil and water conservation district supervisor appointed by the Secretary;

(13) Two members appointed by the Commission who represent the interests of the environmental and conservation community."

Sec. 160. G.S. 143-215.1(a) reads as rewritten:

"(a) Activities for Which Permits Required. -- No person shall do any of the following things or carry out any of the following activities until or unless such person shall have applied for and shall have received from the Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Make any outlets into the waters of the State;

(2) Construct or operate any sewer system, treatment works, or disposal system within the State;

(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State;

(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters to the extent of violating any of the standards applicable to such water;

(5) Change the nature of the waste discharged through any disposal system in any way which would exceed the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters in relation to any of the standards applicable to such waters;

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit,

special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article:

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility;

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities;

(9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto;

(10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

In connection with the above, no such permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the ~~Department of Human Resources~~ head of the agency which administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that such disposal is sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

In any case where the Commission denies a permit, it shall state in writing the reason for such denial and shall also state the Commission's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit."

Sec. 161. G.S. 143-215.1(b1) as enacted by Section 2 of Chapter 453 of the 1989 Session Laws reads as rewritten:

"(b1) The Commission shall adopt rules which exempt the filter backwash facilities of swimming pools and spas from the:

(1) Application and notice requirements of this section;
(2) Reporting requirements of G.S. 143-215.65;
(3) Monitoring requirements of G.S. 143-215.66; and
(4) Requirements of subsection (a) of this section that the Department ~~of Human Resources~~ review and approval of each individual facility."

Sec. 162. G.S. 143-215.7 reads as rewritten:

"§ *143-215.7. Effect on laws applicable to public water supplies and the sanitary disposal of sewage.*

This Article shall not be construed as amending, repealing, or in any manner abridging or interfering with ~~those sections of the General Statutes of North Carolina relative to the control of public water supplies, as now administered by the Department of Human Resources~~ the provisions of Article 10 of Chapter 130A of the General Statutes relating to the control of public water supplies; nor shall the provisions of this Article be construed as being applicable to or in anywise affecting the authority of the Department ~~of Human Resources~~ to control the sanitary disposal of sewage as provided in Article 11 of Chapter 130A of the General Statutes, or as affecting the powers, duties and authority of city, county, county-city and district health departments usually referred to as local health departments or as affecting the charter powers, or other lawful authority of municipal corporations, to pass ordinances in regard to sewage disposal."

Sec. 163. G.S. 143-215.26 reads as rewritten:

"§ *143-215.26. Construction of dams.*

(a) No person shall begin the construction of any dam until at least 10 days after filing with the Department a statement concerning its height, impoundment capacity, purpose, location and other information required by the Department. Persons proposing construction described in G.S. 143-215.25, subparagraphs (2)e and f will comply with malaria control requirements of the Department ~~of Human Resources~~. If on the basis of this information the Department is of the opinion that the proposed dam is not exempt from the provisions of this Part, it shall so notify the applicant, and construction shall not be commenced until a full application is filed by the applicant and approved as provided by G.S. 143-215.29. The Department may also require of applicants so notified the filing of such additional information as it deems necessary, including, but not limited to, streamflow and rainfall data, maps, plans and specifications. Every applicant for approval of a dam subject to the

provisions of this Part shall also file with the Department the certificate of an engineer or contractor legally qualified in the State of North Carolina that he is responsible for the design of the dam, and that said design is safe and adequate. Should the applicant have a professional engineering staff the certificate of a registered professional engineer member of that staff legally qualified in the State of North Carolina will constitute compliance.

(b) When an application has been completed pursuant to the preceding subsection, the Department shall refer copies of the completed application papers to the ~~Department of Human Resources~~ State Health Director, the Wildlife Resources Commission, the Board of Transportation, and such other State and local agencies as it deems appropriate for review and comment."

Sec. 164. G.S. 143-215.86(c) as amended by Section 3 of Chapter 656 of the 1989 Session Laws reads as rewritten:

"(c) Trucks. -- The Secretary of ~~the Department of~~ Transportation may, after consultation with the Secretary of ~~Natural Resources and Community Development,~~ Environment, Health, and Natural Resources, purchase and equip a sufficient number of trucks designed to carry out the provisions of subsection (b) of this section. These trucks shall be maintained by the Department of Transportation and shall be strategically located at various locations throughout the State so as to furnish a ready response when word of an oil or other hazardous substances discharge has been received. The Secretary of ~~the Department of Natural Resources and Community Development~~ Health, Environment, and Natural Resources or his designee will, after consultation, decide where the trucks are to be located."

Sec. 165. G.S. 143-215.86(d) reads as rewritten:

"(d) Rules. -- The Secretary of ~~the Department of~~ Transportation and the Secretary of ~~the Department of Natural Resources and Community Development~~ Environment, Health, and Natural Resources or their designees shall adopt rules for the placement of these trucks and shall determine the manner and way in which they are to be used. The Secretary of ~~the Department of Natural Resources and Community Development~~ Environment, Health, and Natural Resources shall reimburse the Department of Transportation for expenses incurred by the Department of Transportation during cleanups as provided in G.S. 143-215.88."

Sec. 166. G.S. 143-252 reads as rewritten:

"*§ 143-252. Article subject to Chapter 113.*

Nothing in this Article shall be construed to affect the jurisdictional division between the North Carolina Wildlife Resources Commission and the Department of ~~Natural and Economic Resources~~ Environment, Health, and Natural Resources contained in Subchapter IV of Chapter

113 of the General Statutes, or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter."

Sec. 167. G.S. 143-253 reads as rewritten:

"*§ 143-253. Jurisdictional questions.*

In the event of any questions arising between the Department of ~~Natural and Economic Resources~~ Environment, Health, and Natural Resources and the North Carolina Wildlife Resources Commission as to any duty or responsibility or authority imposed upon either of said bodies by law, or in case of any conflicting rules ~~or regulations~~ or administrative practices adopted by said bodies, such questions or matters shall be determined by the Governor ~~of the State~~ and his determination shall be binding on each of said bodies."

Sec. 168. G.S. 143-320 reads as rewritten:

"*§ 143-320. Definitions.*

As used in this Article, unless the context otherwise requires:

~~'Council' means the Community Development Council.~~

(1) 'Department' means the Department of ~~Natural Resources and Community Development.~~ Environment, Health, and Natural Resources.

(2) 'Secretary' means the Secretary of ~~Natural Resources and Community Development.~~ Environment, Health, and Natural Resources.

(3) 'Recreation' means those interests that are diversionary in character and that aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural developments and experiences of a leisure nature, and includes all governmental, private nonprofit and commercial recreation forms of the recreation field and includes parks, conservation, recreation travel, the use of natural resources, wilderness and high density recreation types and the variety of recreation interests in areas and programs which are incorporated in this range."

Sec. 169. Section 8 of Chapter 523 of the 1989 Session Laws is rewritten to read:

"Sec. 8. G.S. 143-345.6 is amended by adding a new subsection to read:

'(d1) The Department of Environment, Health, and Natural Resources shall make comparative salary studies periodically of all registers of deeds offices and at the conclusion of each study the Secretary of the Department of Natural Resources and Community Development shall present his written findings and shall make recommendations to the board of county commissioners and register of deeds of each county.'"

Sec. 170. G.S. 143-436(b) reads as rewritten:

"(b) The Pesticide Board shall consist of seven members, to be appointed by the Governor, as follows:

(1) One member each representing the North Carolina Department of ~~Agriculture, the North Carolina Department of Human Resources, and a State conservation agency,~~ Agriculture and two members representing the North Carolina Department of Environment, Health, and Natural Resources, one of whom shall be the State Health Director or his designee and one of whom shall represent an environmental protection agency. The persons so selected may be either members of a policy board or departmental officials or employees.

(2) A representative of the agricultural chemical industry.

(3) A person directly engaged in agricultural production.

(4) Two at-large members, from fields of endeavor other than those enumerated in subdivisions (2) and (3) of this subsection, one of whom shall be a nongovernmental conservationist."

Sec. 171. G.S. 143-439(b) reads as rewritten:

"(b) The Pesticide Advisory Committee shall consist ~~of 19 members to be appointed by the Board as follows:~~ of: three practicing farmers; one conservationist (at large); one ecologist (at large); one representative of the pesticide industry; one representative of agribusiness (at large); one local health director; three members of the North Carolina State University School of Agriculture and Life Sciences, at least one of which shall be from the area of wildlife or biology; one member ~~each~~ representing the North Carolina Department of ~~Agriculture,~~ Agriculture; ~~the North Carolina Department of Human Resources, and the North Carolina Department of Natural Resources and Community Development;~~ one member representing the Department of Environment, Health, and Natural Resources; the State Health Director; one representative of a public utility or railroad company which uses ~~pesticides,~~ pesticides; one representative ~~or~~ of the Board of Transportation; one member of the North Carolina Agricultural Aviation Association; one member of the general public (at large); one member actively engaged in forest pest management; and one member representing the Solid ~~and Hazardous~~ Waste Management ~~Branch, Environmental Health Section,~~ Division ~~of Health Services, Department of Human Resources,~~ of the Department of Environment, Health, and Natural Resources. Each State agency represented on the Committee shall be appointed by the head of the agency. Other members of the Committee shall be appointed by the Board."

Sec. 172. G.S. 143B-137 reads as rewritten:

"§ *143B-137. Department of Human Resources -- duties.*

It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provision of services in the fields of ~~general and~~ mental health and rehabilitation with the basic goal being to assist all citizens -- as individuals, families, and communities -- to achieve and maintain an adequate level of health, social and economic well-being, and dignity. Whenever possible the department shall emphasize preventive measures to avoid or to reduce the need for costly emergency treatments that often result from lack of forethought. Therefore, it shall be the policy of this department to establish priorities to eliminate those excessive expenses incurred by the State for lack of adequate funding or careful planning of preventive measures."

Sec. 173. G.S. 143B-139.2 reads as rewritten:

"§ *143B-139.2. Department of Human Resources -- head -- requests for grants-in-aid from non-State agencies.*

It is the intent of this General Assembly that non-State ~~health and welfare~~ human resources agencies submit their appropriation requests for grants-in-aid through the Secretary of the Department of Human Resources for recommendations to the Governor and the Advisory Budget Commission and the General Assembly, and that agencies receiving these grants, at the request of the Secretary of the Department of Human Resources, provide a postaudit of their operations that has been done by a certified public accountant."

Sec. 174. G.S. 143B-140 is repealed.

Sec. 175. Part 3 of Article 3 of Chapter 143B of the General Statutes (G.S. 143B-142 through G.S. 143B-146) is recodified as Article 1A of Chapter 130A of the General Statutes (G.S. 130A-29 through G.S. 130A-33).

Sec. 176. G.S. 130A-29 reads as rewritten:

"§ ~~*143B-142*~~ *130A-29. Commission for Health Services -- creation, powers and duties.*

(a) The Commission for Health Services of the Department of ~~Human Resources~~ Environment, Health, and Natural Resources is created with the authority and duty to adopt rules to protect and promote the public health.

(b) The Commission for Health Services is authorized to adopt rules necessary to implement the public health programs administered by the Department of ~~Human Resources~~ Environment, Health, and Natural Resources as provided in Chapter 130A of the General Statutes.

(c) The Commission for Health Services shall adopt rules:

(1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.
(2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o);
(3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522;
(4) Establishing requirements for the sanitation of local confinement facilities as provided in G.S. 153-53.4; and
(5) Governing environmental impact statements and information required in applications to determine eligibility for water supply systems under the provisions of the Clean Water Bond Act.

(d) The Commission is authorized to create:
(1) Metropolitan water districts as provided in G.S. 162A-33;
(2) Sanitary districts as provided in Part 2 of Article 2 of Chapter 130A of the General Statutes; and
(3) Mosquito control districts as provided in Part 2 of Article 12 of Chapter 130A of the General Statutes.

(e) Rules adopted by the Commission for Health Services shall be enforced by the Department of ~~Human Resources~~ Environment, Health, and Natural Resources."

Sec. 177. G.S. 130A-30 reads as rewritten:

"§ ~~*143B-143*~~ *130A-30. Commission for Health Services -- members; selection; quorum; compensation.*

(a) The Commission for Health Services of the Department of ~~Human Resources~~ Environment, Health, and Natural Resources shall consist of 12 members, four of whom shall be elected by the North Carolina Medical Society and eight of whom shall be appointed by the Governor.

(b) One of the members appointed by the Governor shall be a licensed pharmacist, one a registered engineer experienced in sanitary engineering or a soil scientist, one a licensed veterinarian, one a licensed optometrist, one a licensed dentist, and one a registered nurse. The initial members of the Commission shall be the members of the State Board of Health who shall serve for a period equal to the remainder of their current terms on the State Board of Health, three of whose appointments expire May 1, 1973, and two of whose appointments expire May 1, 1975. At the end of the respective terms of office of initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the

Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) The North Carolina Medical Society shall have the right to remove any member elected by it for misfeasance, malfeasance, or nonfeasance, and the Governor shall have the right to remove any member appointed by him for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. ~~143B-13 of the Executive Organization Act of 1973.~~ 143B-13. Vacancies on said Commission among the membership elected by the North Carolina Medical Society shall be filled by the executive committee of the Medical Society until the next meeting of the Medical Society, when the Medical Society shall fill the vacancy for the unexpired term. Vacancies on said Commission among the membership appointed by the Governor shall be filled by the Governor for the unexpired term.

(d) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(e) The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5."

Sec. 178. G.S. 130A-33 reads as rewritten:

"§ ~~*143B-146*~~ *130A-33. Commission for Health Services -- regular and special meetings.*

Each year there shall be four regular meetings of the Commission for Health Services, one of which shall be held during the annual meeting and conjointly with a general session of the North Carolina Medical Society at which time and place the annual report shall be submitted by the Secretary of ~~Human Resources~~ Environment, Health, and Natural Resources or his designee. The other three meetings shall be at such times and places as the chairman of the Commission shall designate. Special meetings of the Commission may be called by the chairman, or by a majority of the members of the Commission."

Sec. 179. Part 18 of Article 3 of Chapter 143B of the General Statutes (G.S. 143B-188 through G.S. 143B-190) is recodified as Part 3A of Article 5 of Chapter 130A of the General Statutes (G.S. 130A-131 through G.S. 130A-131.2).

Sec. 180. G.S. 130A-131.2 reads as rewritten:

"§ ~~*143B-190*~~ *130A-131.2. Council role.*

The Council shall advise the Department of Environment, Health, and Natural Resources and the Commission for Health Services on the needs of persons with sickle cell syndrome, and shall make recommendations to meet these needs. Such recommendations shall include but not be limited to recommendations for legislative action and for rules regarding the services of the Sickle Cell Program. The Council shall develop procedures to facilitate its operation. All

clerical and other services required by the Council shall be furnished by the Department of ~~Human Resources~~ Environment, Health, and Natural Resources within budget limitations."

Sec. 181. G.S. 143B-202 and G.S. 143B-203 are repealed.

Sec. 182. (a) Part 20 of Article 3 of Chapter 143B of the General Statutes (G.S. 143B-204 through G.S. 143B-206) is recodified as Part 1 of Article 1B of Chapter 130A of the General Statutes (G.S. 130A-33.30 through G.S. 130A-33.32).

(b) A new Article 1B is added to Chapter 130A of the General Statutes to consist of G.S. 130A-33.30 through G.S. 130A-33.32 as Part 1 and G.S. 130A-33.40 through 130A-33.41 as Part 2. The heading for Article 1B of Chapter 130A shall read:

"ARTICLE 1B.

Commissions and Councils."

Sec. 183. G.S. 130A-33.30 reads as rewritten:

"§ ~~*143B-204*~~ *130A-33.30. Commission of Anatomy -- creation; powers and duties.*

There is hereby created the Commission of Anatomy of the Department of ~~Human Resources~~ Environment, Health, and Natural Resources with the power and duty to adopt rules ~~and regulations~~ for the distribution of dead human bodies and parts thereof for the purpose of promoting the study of anatomy in the State of North Carolina. The Commission is authorized to receive dead bodies pursuant to G.S. 90-216.6 and to be a donee of a body or parts thereof pursuant to Article 15A of Chapter 90 of the General Statutes known as the Uniform Anatomical Gift Act and to distribute such bodies or parts thereof pursuant to the rules ~~and regulations~~ adopted by the Commission."

Sec. 184. G.S. 130A-33.31 reads as rewritten:

"§ ~~*143B-205*~~ *130A-33.31. Commission of Anatomy -- members; selection; term; chairman; quorum; meetings.*

(a) The Commission of Anatomy shall consist of five members, one from the membership of the State Board of Mortuary Science, and one each from The University of North Carolina School of Medicine, East Carolina University School of Medicine, Duke University School of Medicine, and Bowman Gray School of Medicine. The dean of each school shall make recommendations and the Secretary of ~~Human Resources~~ Environment, Health, and Natural Resources shall appoint from such recommendations a member to the Commission. The president of the State Board of Mortuary Science shall appoint one member from that Board to the Commission. The members shall serve terms of four years except two of the original members shall serve a term of one year, one shall serve a term of two years, one shall serve a term of three years, and one shall serve a term of four

years. The Secretary shall determine the terms of the original members.

(b) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) The Secretary shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance.

(d) The Commission shall elect a chairman annually from its own membership.

(e) A majority of the Commission shall constitute a quorum for the transaction of business.

(f) The Commission shall meet at any time and place within the State at the call of the chairman or upon the written request of three members.

(g) All clerical and other services required by the Commission shall be supplied by the Secretary of ~~Human Resources~~ Environment, Health, and Natural Resources."

Sec. 185. G.S. 130A-33.32 reads as rewritten:

"§ ~~*143B-206*~~ *130A-33.32. Commission of Anatomy -- reference to former Board of Anatomy in testamentary disposition.*

A testamentary disposition of a body or part thereof to the former Board of Anatomy shall be deemed in all respects to be a disposition to the Commission of Anatomy."

Sec. 186. Part 26 of Article 3 of Chapter 143B of the General Statutes (G.S. 143B-216.8 through G.S. 143B-216.9) is recodified as Part 2 of Article 1B of Chapter 130A of the General Statutes (G.S. 130A-33.40 through G.S. 130A-33.41).

Sec. 187. G.S. 130A-33.40 reads as rewritten:

"§ ~~*143B-216.8*~~ *130A-33.40. Governor's Council on Physical Fitness and Health -- creation; powers; duties.*

There is hereby created the Governor's Council on Physical Fitness and Health in the Department of ~~Human Resources~~ Environment, Health, and Natural Resources. The Council shall have the following functions and duties:

(1) To promote interest in the area of physical fitness; to consider the need for new State programs in the field of physical fitness; to enlist the active support of individual citizens, professional and civic groups, amateur and professional athletes, voluntary organizations, State and local government agencies, private industry and business, and community recreation programs in efforts to improve the physical fitness and thereby the health of the citizens of North Carolina;

(2) To examine current programs of physical fitness available to the people of North Carolina, and to make recommendations to the Governor for coordination of programs to prevent duplication of such services; to support programs of physical fitness in the public school systems; to develop cooperative programs with medical, dental, and other groups; to maintain a liaison with government, private and other agencies concerning physical fitness programs; to stimulate research in the area of physical fitness; to sponsor physical fitness workshops, clinics, conferences, and other related activities pertaining to physical fitness throughout the State;

(3) To serve as an agency for recognizing outstanding developments, contributions, and achievements in physical fitness in North Carolina; and

(4) The Council shall make an annual report to the Governor and to the Secretary of ~~Human Resources~~ Environment, Health, and Natural Resources, including therein suggestions and recommendations for the furtherance of the physical fitness of the people of North Carolina."

Sec. 188. G.S. 130A-33.41 reads as rewritten:

"§ ~~*143B-216.9*~~ *130A-33.41. The Governor's Council on Physical Fitness and Health -- members; selection; quorum; compensation.*

The Governor's Council on Physical Fitness in the Department of ~~Human Resources~~ Environment, Health, and Natural Resources shall consist of 10 members, including a chairman.

(1) The composition of the Council shall be as follows: one member of the Senate appointed by the President of the Senate, and one member of the House of Representatives appointed by the Speaker of the House of Representatives, and eight persons from the health care professions, the fields of business and industry, physical education, recreation, sports and the general public. The eight nonlegislative members of the Council shall be appointed by the Governor to serve at his pleasure.

(2) The eight initial nonlegislative members of the Council shall be appointed thusly: two for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years. At the end of the respective terms of office of these initial members, all succeeding appointments of nonlegislative members shall be for terms of four years; nonlegislative members shall serve no more than two consecutive four-year terms; all unexpired terms due to resignation, death, disability, removal or refusal to serve

shall be filled by a qualified person appointed by the Governor for the balance of the unexpired term.

(3) Legislative members of the Council shall serve two-year terms beginning and ending on July 1 of odd-numbered years, and shall serve no more than two consecutive terms.

(4) Members of the Governor's Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 or 138-6, or travel and subsistence expenses under G.S. 120-3.1, as appropriate.

(5) The Council shall meet no more than quarterly.

(6) A majority of the Governor's Council shall constitute a quorum for the transaction of business."

Sec. 189. Part 27 of Article 3 of Chapter 143B of the General Statutes (G.S. 143B-216.10 through G.S. 143B-216.15) is recodified as Part 4A of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-285.10 through G.S. 143B-285.15).

Sec. 190. G.S. 143B-285.10 reads as rewritten:

"§ *143B-~~216.10~~ 285.10. Declaration of findings.*

(a) The General Assembly of North Carolina hereby finds and declares that the safe management of hazardous wastes and low-level radioactive wastes, and particularly the timely establishment of adequate facilities for the disposal and management of hazardous wastes and low-level radioactive wastes is one of the most urgent problems facing North Carolina. The safe management and disposal of these wastes are essential to continued economic growth and to protection of the public health and safety. When improperly handled, these wastes pose a threat to the water, land, and air resources of the State, as well as to the health and safety of its citizens. Consequently, cooperation and coordination among the private sector, the general public and State and local agencies to assure the prevention of unnecessary waste and the establishment of adequate treatment and disposal facilities are essential. The General Assembly further finds that cooperation and coordination among the private sector, the general public and State regulatory agencies will be advanced by the creation of a Governor's Waste Management Board.

(b) It is the intent of the General Assembly by enactment of the Waste Management Act of 1981 to prescribe a uniform system for the management of hazardous waste and low-level radioactive waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste and low-level radioactive waste by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations or otherwise. To this end, all provisions of special, local or private acts or resolutions are repealed which:

(1) Prohibit the transportation, treatment, storage, or disposal of hazardous or low-level radioactive waste within any county, city, or other political subdivision;

(2) Prohibit the siting of a hazardous waste facility or a low-level radioactive waste facility within any county, city, or other political subdivision;

(3) Place any restriction or condition not placed by this ~~Part or by General Statutes Chapter 130, Article 13B or Chapter 104E~~ Part, Article 9 of Chapter 130A of the General Statutes, or Chapters 130B, 104E, or 104G of the General Statutes upon the transportation, treatment, storage or disposal of hazardous or low-level radioactive waste, or upon the siting of a hazardous waste facility or low-level radioactive waste facility within any county, city, or other political subdivision; or

(4) In any manner are in conflict or inconsistent with the provisions of this ~~Part or General Statutes Chapter 130, Article 13B or Chapter 104E.~~ Part, Article 9 of Chapter 130A of the General Statutes, or Chapters 130B, 104E, or 104G of the General Statutes. No special, local or private acts or resolutions enacted or taking effect hereafter may be construed to modify, amend or repeal any portion of the Waste Management Act of 1981 unless it expressly provides for such by specific references to the appropriate section of this Part. Further to this end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities are invalidated which (i) prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility ~~or a hazardous waste landfill facility~~ approved ~~by the Governor~~ pursuant to G.S. ~~130-166.17B;~~ 130A-293; or (ii) prohibit or have the effect of prohibiting the establishment or operation of a low-level radioactive waste facility ~~or a low-level radioactive waste landfill facility approved by the Governor~~ approved pursuant to G.S. 104E-6.2.

(c) The General Assembly of North Carolina hereby finds and declares that prevention, recycling, detoxification, and reduction of hazardous wastes should be encouraged and promoted. These are alternatives which ultimately remove such wastes' hazards to human health and the environment. When these alternatives are not technologically feasible, retrievable above-ground storage is sometimes preferable to other means of disposal of some types of waste until appropriate methods for recycling or detoxification of the stored wastes

are found. ~~Landfilling~~ Land disposal shall be used only when it is clearly appropriate. Hazardous waste ~~landfill~~ disposal facilities and polychlorinated biphenyl ~~landfill~~ disposal facilities shall be detoxified as soon as technology which is economically feasible is available and sufficient money is available without additional appropriation."

Sec. 191. G.S. 143-285.12(a) reads as rewritten:

"(a) There is hereby created the Governor's Waste Management Board to be located in the Department of ~~Human Resources~~ Environment, Health, and Natural Resources. The composition of the Board shall be as follows:

(1) ~~Five~~ Four members from State government: the Secretary or Commissioner of ~~Human Resources, Natural Resources and Community Development~~ Environment, Health, and Natural Resources, Commerce, Agriculture, and Crime Control and Public Safety. At the request of such Secretary or Commissioner, the Governor may appoint another official from the same department to serve in his stead.

(2) Nine members appointed by the Governor from the following categories: one from county government, one from municipal government, two from private industry, two from the field of higher education, research or technology, one who shall be a physician licensed to practice medicine, and two from the public at large interested in environmental matters.

(3) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President of the Senate in accordance with G.S. 120-121."

Sec. 192. G.S. 143B-285.14 reads as rewritten:

"§ *143B-~~216.14~~ 285.14. Functions and powers of Department of ~~Human Resources~~ Environment, Health, and Natural Resources.*

(a) The Department of ~~Human Resources~~ Environment, Health, and Natural Resources is authorized:

(1) To enter upon any lands and structures upon lands to make surveys, borings, soundings and examinations as may be necessary to determine the suitability of a site for a hazardous waste facility, hazardous waste ~~landfill~~ disposal facility, low-level radioactive waste facility or low-level radioactive ~~landfill~~ disposal facility. The Department shall give 30 days' notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking: provided however that the

Department shall make reimbursement for any damage to such land or structures caused by such activities;

(2) To provide necessary clerical, technical, and administrative assistance to the Board, and to employ the necessary personnel for the accomplishment of the purposes of this Part.

(3) To enforce any rules adopted by the Board pursuant to this Part in the manner provided for by G.S. 130A-22(a) and 104E-24.

(b) The provisions of subdivision (1) of subsection (a) of this section shall also apply to the North Carolina Hazardous Waste Management Commission and the North Carolina Low-Level Radioactive Waste Management Authority."

Sec. 193. G.S. 143B-290 reads as rewritten:

"*§ 143B-290. North Carolina Mining Commission -- creation; powers and duties.*

There is hereby created the North Carolina Mining Commission of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources with the power and duty to promulgate rules ~~and regulations~~ for the enhancement of the mining resources of the State.

(1) The North Carolina Mining Commission shall have the following powers and duties:

a. To act as the advisory body to the Interstate Mining Compact pursuant to G.S. 74-38(a);

b. To adopt and modify rules ~~and regulations~~ to implement Chapter 74, Article 6, pursuant to G.S. 74-44(b);

c. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61; and

d. To promulgate rules ~~and regulations~~ necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63;

e. To promulgate rules ~~and regulations~~ necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983, pursuant to G.S. 74-86.

(2) The Commission is authorized ~~and empowered~~ to make such ~~rules and regulations,~~ rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall make such rules ~~and regulations,~~ consistent with the provisions of this Chapter. All rules ~~and regulations~~ adopted by the Commission shall be enforced by the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources."

Sec. 194. G.S. 143B-294 reads as rewritten:

"§ *143B-294. Soil and Water Conservation Commission -- creation; powers and duties.*

There is hereby created the Soil and Water Conservation Commission of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources with the power and duty to adopt rules ~~and regulations~~ to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has the following powers and duties:
   a. To approve petitions for soil conservation districts;
   b. To approve application for watershed plans; and
   c. Such other duties as specified in Chapter 139.

(2) The Commission shall adopt rules ~~and regulations~~ consistent with the provisions of this Chapter. All rules ~~and regulations~~ not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules ~~and regulations~~ adopted by the Commission shall be enforced by the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources."

Sec. 195. G.S. 143B-300 reads as rewritten:

"§ *143B-300. Wastewater Treatment Plant Operators Certification Commission -- creation; powers and duties.*

(a) There is hereby created the Wastewater Treatment Plant Operators Certification Commission ~~of~~ to be located in the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources. ~~with the power and duty to~~ The Commission shall adopt rules ~~and regulations~~ with respect to the certification of wastewater treatment plant operators as provided by Article 3 of Chapter 90A of the General Statutes of North Carolina.

(b) The Commission ~~is authorized and empowered to~~ shall adopt such ~~rules and regulations,~~ rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for programs concerned with the certification of wastewater treatment plant operators which may be made available to the State by the

federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid."

Sec. 196. G.S. 143B-301 reads as rewritten:

"*§ 143B-301. Wastewater Treatment Plant Operators Certification Commission -- members; selection; removal; compensation; quorum; services.*

(a) The Wastewater Treatment Plant Operators Certification Commission ~~of the Department of Natural Resources and Community Development~~ shall consist of seven members appointed by the Secretary of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources with the approval of the Environmental Management Commission with the following qualifications:

(1) Two members shall be currently employed as wastewater treatment plant operators, wastewater plant superintendents, water and sewer superintendents, or equivalent positions with a North Carolina municipality;

(2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;

(3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;

(4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;

(5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment; and

(6) One member who is employed by the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources and works in the field of water pollution control, who shall serve as ~~chairman of the Certification~~ Chairman of the Commission.

(b) The initial members of the Commission shall be the members of the Wastewater Treatment Plant Operators Board of Certification who shall serve for a period equal to the remainder of their current terms on the Wastewater Treatment Plant Operators Board of Certification. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for staggered terms of three years and until their successors are appointed and qualify.

(c) The chairman of the Wastewater Treatment Plant Operators Certification Commission shall serve at the pleasure of the Secretary of

~~Natural Resources and Community Development.~~ Environment, Health, and Natural Resources.

(d) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(e) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. ~~143B-13 of the Executive Organization Act of 1973.~~ 143B-13.

(f) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. ~~143B-15 of the Executive Organization Act of 1973.~~ 143B-15.

(g) A majority of the Commission shall constitute a quorum for the transaction of business.

(h) All clerical and other services required by the Commission shall be supplied by the Secretary of the ~~Department.~~ Department of Environment, Health, and Natural Resources."

Sec. 197. Section 10 of Chapter 372 of the 1989 Session Laws is rewritten to read:

"Sec. 10. G.S. 143B-301 reads as rewritten:

'§ *143B-301. Wastewater Treatment Plant Operators Certification Commission -- members; selection; removal; compensation; quorum; services.*

(a) The Wastewater Treatment Plant Operators Certification Commission shall consist of ~~seven~~ nine members appointed by the Secretary of Environment, Health, and Natural Resources with the approval of the Environmental Management Commission with the following qualifications:

(1) Two members shall be currently employed as wastewater treatment plant operators, wastewater plant superintendents, water and sewer superintendents, or equivalent positions with a North Carolina municipality;

(2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;

(3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;

(4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;

(5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment;

(6) One member who is employed by the Department of Environment, Health, and Natural Resources and works in the field of water pollution control, who shall serve as Chairman of the ~~Commission.~~ Commission; and

(7) Two members shall be currently employed as sanitary sewage system operators, wastewater collection system superintendents, water and sewer department directors, or equivalent positions with a North Carolina municipality.

(b) The initial members of the Commission shall be the members of the Wastewater Treatment Plant Operators Board of Certification who shall serve for a period equal to the remainder of their current terms on the Wastewater Treatment Plant Operators Board of Certification. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for staggered terms of three years and until their successors are appointed and qualify.

(c) The chairman of the Wastewater Treatment Plant Operators Certification Commission shall serve at the pleasure of the Secretary of Environment, Health, and Natural Resources.

(d) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(e) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

(f) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15.

(g) A majority of the Commission shall constitute a quorum for the transaction of business.

(h) All clerical and other services required by the Commission shall be supplied by the Secretary of the Department of Environment, Health, and Natural Resources.'"

Sec. 198. G.S. 143B-390(a) reads as rewritten:

"(a) The Council shall consist of 28 members appointed as follows:

(1) Eighteen members shall be appointed by the Governor from the public and private academic and scientific institutions in the State and from the various industries and professions in the State concerned with the exploration and use of the ocean and marine resources. These members shall serve

four-year terms. The terms shall be staggered so that nine terms begin July 1 of each odd-numbered year.

(2) Three at-large members shall be appointed by the Governor. These members shall serve four-year terms. The terms shall be staggered so that one term begins July 1, 1987, and two terms begin July 1, 1989.

(3) Three members shall be the chairpersons of the North Carolina Marine Resources Centers' local advisory committees. These members shall serve during their tenures as chairmen.

(4) One member representing the Department of Commerce in the area of ports and waterways shall be appointed by and serve at the pleasure of the Secretary of the Department of Commerce.

(5) Two members representing the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources in the area of coastal resources and environmental protection shall be appointed by and serve at the pleasure of the Secretary of ~~the Department of Natural Resources and Community Development.~~ Environment, Health, and Natural Resources.

(6) ~~One member representing the Department of Human Resources in the area of health services shall be appointed by and serve at the pleasure of the Secretary of the Department of Human Resources.~~ The State Health Director or his designee."

Sec. 199. Part 11 of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-305 through G.S. 143B-307) is recodified as Part 2A of Article 10 of Chapter 143B of the General Statutes (G.S. 143B-437.1 through G.S. 143B-437.3).

Sec. 200. G.S. 143B-437.1 reads as rewritten:

"§ *143B-~~305.~~ 437.1. Community Development Council -- creation; powers and duties.*

There is hereby created the Community Development Council ~~of the Department of Natural Resources and Community Development.~~ to be located in the Department of Commerce. The Community Development Council shall have the following functions and duties:

(1) To advise the Secretary of ~~Natural Resources and Community Development~~ Commerce with respect to promoting and assisting in the orderly development of North Carolina counties and communities.

(2) To advise the Secretary of ~~Natural Resources and Community Development~~ Commerce with respect to

the type and effectiveness of planning and management services provided to local government.

(3), (4) Repealed by Session Laws 1977, c. 198, s. 13.

(5) The Council shall consider and advise the Secretary of ~~Natural Resources and Community Development~~ Commerce upon any matter the Secretary may refer to it."

Sec. 201. G.S. 143B-437.2 reads as rewritten:

"§ *143B-~~306.~~ 437.2. Community Development Council -- members; chairman; selection; removal; compensation; quorum; services.*

(a) The Community Development Council ~~of the Department of Natural Resources and Community Development~~ shall consist of 11 members appointed by the Governor. The composition of the Council shall be as follows: one member who shall be a local government official, one member who shall be the Executive Secretary of the League of Municipalities, one member who shall be the Executive Secretary of the County Commissioners Association, one member who shall represent industry, one member who shall represent labor, and six members at large.

(b) The Governor shall designate one member of the Council to serve as ~~chairman~~ Chairman at the pleasure of the Governor.

(c) The initial members of the Council other than those members serving in an ex officio capacity shall be appointed to serve for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

(e) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the Council shall constitute a quorum for the transaction of business.

(g) All clerical and other services required by the Council shall be supplied by the Secretary of ~~Natural Resources and Community Development.~~ Commerce."

Sec. 202. Part 27 of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-344.11 through G.S. 143B-344.15) is recodified as Part 3A of Article 10 of Chapter 143B of the General Statutes (G.S. 143B-438.1 through G.S. 143B-438.5).

Sec. 203. G.S. 143B-438.4 reads as rewritten:

"§ *143B-~~344.14.~~ 438.4. Coordinating Council.*

(a) The State Job Training Coordinating Council is established within the Department of ~~Natural Resources and Community Development~~ Commerce.

(b) Operating funds and staff for the Council shall be supported with funds from the Job Training Partnership Act.

(c) Adequate office space shall be provided by the Department of ~~Natural Resources and Community Development~~ Commerce.

(d) The initial staffing level of the Council and the level of funding support required shall be determined by the Secretary of ~~Natural Resources and Community Development~~ Commerce. However, the initial staffing level shall not exceed 10 personnel as may be necessary to carry out its functions under this Part and the Job Training Partnership Act.

(e) Duties and responsibilities of the Council include but shall not be limited to the following:

(1) Overseeing the meeting of the State's goals for employment and training.

(2) Continuously reviewing the plans and programs of agencies operating federally funded programs related to employment and training and of other agencies providing employment and training-related services in the State that may be funded with State funds.

(3) Conducting studies, preparing reports and analyses, including an annual published report to the Governor and General Assembly, and providing such advisory services as may be authorized or directed by the Governor.

(4) Recommending the allocation of Job Training Partnership Act funds not subject to the seventy-eight percent (78%) that flows directly to service delivery areas.

(5) Recommending program goals to insure job training for unskilled youth and adults is a matter of the highest priority and encouraging Service Delivery Areas (SDA's) to reflect these goals in their SDA plans.

(6) Developing a long term tracking system to measure the effectiveness of the Job Training Partnership Act with respect to permanent job placements. Such a tracking system shall not be less than one year and shall be implemented by July 1, 1986.

(7) Insuring compliance with the provisions of Sections 122(b)(7)A and B and 122(b)(8) of the Job Training Partnership Act no later than May 30 of every year, requiring the following:

a. Identification of employment and training and vocational education needs throughout the State;

b. Assessing the extent to which existing programs are meeting these needs.

c. Repealed by Session Laws 1985, c. 791, s. 26.1(b), effective July 1, 1985.

(8) Annually measuring the increase in employment and earnings and the reductions in welfare dependency by SDA resulting from participating in the Job Training Partnership Act program and reporting those findings to the Governor and General Assembly.

(9) Annually reporting to the Governor and General Assembly on funds expended by each SDA for job training services and the reason service providers were chosen.

(10) Providing management guidance and review of all State administered employment and training programs and encouraging compliance by the SDA's with the goals and purposes outlined by the General Assembly, the Governor, and the State Council.

(11) Insuring that service delivery area plans are submitted to the General Assembly within 30 days after received by the Council as prescribed in Section 105(a)(1)A and B of Public Law 97-300.

(12) Obtaining other information from recipients of Job Training Partnership Act funds, as requested by the Governor and General Assembly.

(f) The State Job Training Coordinating Council:

(1) Shall be appointed by the Governor in a manner consistent with Section 122 of Public Law 97-300.

(2) Shall meet at the call of the chairman. A majority of the Council shall constitute a quorum for the transaction of business. Members shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5, 138-6 or 120-3.1, as the case may be.

(3) The Council shall have a standing Committee to be known as the Job Training Interagency Committee. The members of the committee shall be the ~~Secretaries of Natural Resources and Community Development and~~ Secretary of Commerce, the President of the Department of Community Colleges, the Commissioner of Labor, and the Superintendent of Public Instruction or their designees. This committee shall jointly develop and implement a plan to integrate the Job Training Partnership Act program and participants into the economic development efforts of the State. Such a plan shall make maximum use of customized

training and on-the-job training efforts of existing, new, or expanding businesses. This plan shall be developed and implemented no later than February 1, 1986. A copy of the plan shall be submitted to the President of the North Carolina Senate and the Speaker of the North Carolina House of Representatives no later than December 15, 1985. In addition, the Joint Legislative Commission on Governmental Operations shall review the plan prior to implementation and offer suggested changes.

(4) The Council may create such committees as may be necessary to the proper conduct of its business. The Governor may establish such additional advisory bodies, in accordance with existing law, related to employment and training as may be necessary and appropriate to the conduct of federally-supported employment and training-related programs."

Sec. 204. G.S. 153A-225(b) reads as rewritten:

"(b) If a prisoner in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Secretary of ~~Human Resources~~ Environment, Health, and Natural Resources. The report shall be made on forms ~~provided by the [State Board of Health, and the Board of Health] shall develop and distribute these forms~~ developed and distributed by the Department of Environment, Health, and Natural Resources."

Sec. 205. G.S. 153A-226(b) reads as rewritten:

"(b) The ~~[Commission for Health Services]~~ Commission for Health Services shall prepare a score sheet to be used by sanitarians of local or district health departments in inspecting local confinement facilities. The sanitarians shall inspect local confinement facilities as often as may be required by the Commission for Health Services. If an inspector of the Department finds conditions that reflect hazards or deficiencies in the sanitation or food service of a local confinement facility, he shall immediately notify the local or district health department. The health department shall promptly cause a sanitarian to inspect the facility. After making his inspection, the sanitarian shall forward a copy of his report to the Department of Human Resources and to the unit operating the facility, on forms prepared by the ~~[Department].~~ Department of Environment, Health, and Natural Resources. The report shall indicate whether the facility and its kitchen or other place for preparing food is approved or disapproved for public health purposes. If the facility is disapproved, the situation shall be rectified according to the procedures of G.S. 153A-223."

Sec. 206. G.S. 159G-3 reads as rewritten:

"*§ 159G-3. Definitions.*

As used in this Chapter, the following words shall have the meanings indicated, unless the context clearly requires otherwise:

(1) 'Administrative Account' means the Administrative Account in the Clean Water Revolving Loan and Grant Fund established in the Office of State Budget and Management under the provisions of this Chapter to cover administrative costs of the program.

(2) 'Applicant' means a local government unit that applies for a revolving loan or grant under the provisions of this Chapter.

(3) 'Clean Water Revolving Loan and Grant Fund' means the fund established in the Office of State Budget and Management to carry out the provisions of this Chapter, with various accounts therein as herein provided.

(4) 'Construction costs' means the actual costs of planning, designing and constructing any project for which a revolving loan or grant is made under this Chapter including planning; environmental assessment; wastewater system analysis, evaluation and rehabilitation; engineering; legal, fiscal, administrative and contingency costs for water supply systems, wastewater collection systems, wastewater treatment works and any extensions, improvements, remodeling, additions, or alterations to existing systems. Construction costs may include excess or reserve capacity costs, attributable to no more than 20-year projected domestic growth, plus ten percent (10%) unspecified industrial growth. In addition, construction costs shall include any fees payable to the Environmental Management Commission or the ~~Division of Health Services~~ Division of Environmental Health for review of applications and grant of permits, and fees for inspections under G.S. ~~159G-314 [159G-14].~~ 159G-14. Construction costs may also include the costs for purchase or acquisition of real property.

(5) 'Grant' means a sum of money given by the State to a local government unit to subsidize the construction costs of a project authorized by this Chapter, without any obligation on the part of such unit to repay such sum.

(6) 'Commission for Health Services' means the Commission for Health Services of the Department of ~~Human Resources.~~ Environment, Health, and Natural Resources.

(6a) 'Debt instrument' means an instrument in the nature of a promissory note executed by a local government unit under the provisions of this Chapter, to evidence a debt to the State and obligation to repay the principal, plus interest, under stated terms.

(7) ~~'Division of Health Services' means the Division of Health Services of the Department of Human Resources.~~ 'Division of Environmental Health' means the Division of Environmental Health of the Department of Environment, Health, and Natural Resources.

(8) 'Environmental Management Commission' means the Environmental Management Commission of the ~~Department of Natural Resources and Community Development created by Article 7, Part 4 of Chapter 143B of the General Statutes.~~ Department of Environment, Health, and Natural Resources.

(9) 'Local Government Commission' means the Local Government Commission of the Department of the State Treasurer, established by Article 2 of Chapter 159 of the General Statutes.

(10) 'Local government unit' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority or joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.

(11) 'Office of State Budget and Management' means the Office of State Budget and Management established by law.

(12) 'Receiving agency' means the ~~Division of Health Services~~ Division of Environmental Health with respect to receipt of applications for revolving loans and grants for water supply systems, and the Environmental Management Commission and the Division of Environmental Management with respect to receipt of applications for revolving loans and grants for wastewater systems.

(13) 'Revolving construction loan' means a sum of money loaned by the State to a local government unit to subsidize the construction costs of a project authorized by this Chapter, with an obligation on the part of such unit to repay such sum, the proceeds of such repayment to be deposited in the Water Pollution Control Revolving Fund.

(14) 'Revolving emergency loan' means a sum of money loaned by the State to a local government unit upon a

certification, as provided in this Chapter, of a serious public health hazard, with an obligation on the part of such unit to repay such sum.

(15) 'Revolving loan' includes a revolving construction loan and an emergency loan.

(15a) 'State' means the State of North Carolina.

(15b) 'State Treasurer' means the Treasurer of the State elected pursuant to Article III, Section 7 of the Constitution or his designated representative.

(16) 'Wastewater Accounts' means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the Office of State Budget and Management under this Chapter for revolving loans and grants for wastewater treatment work and wastewater collection system projects.

(17) 'Wastewater collection system' means a unified system of pipes, conduits, pumping stations, force mains, and appurtenances other than interceptor sewers, for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments or any other buildings, and owned by a local government unit.

(18) 'Wastewater treatment works' means the various facilities and devices used in the treatment of sewage, industrial waste or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, phosphorous removal equipment, pumping, power and other equipment and their appurtenances.

(19) 'Water Supply Accounts' means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the Office of State Budget and Management under this Chapter for revolving loans and grants for water supply system projects.

(20) 'Water supply system' means a public water supply system consisting of facilities and works for supplying, treating and distributing potable water including, but not limited to, impoundments, reservoirs, wells, intakes, water filtration plants and other treatment facilities, tanks and other storage facilities, transmission mains, distribution piping, pipes connecting the system to other public water supply systems, pumping equipment and all other necessary appurtenances, equipment and structures."

Sec. 207. G.S. 159G-6 reads as rewritten:

"§ *159G-6. Distribution of funds.*

(a) Revolving loans and grants.

(1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

(2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be three million dollars ($3,000,000). The maximum principal amount of grants made to any one local government unit during any fiscal year shall be five hundred thousand dollars ($500,000).

(3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his responsibilities under this section, the State Treasurer shall make a written request to the Office of State Budget and Management to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. -- The sums allocated in G.S. ~~159G-304 [G.S. 159G-4]~~ 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Office of the State Budget and Management shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for

grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the county in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subsection (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. -- The sums allocated in G.S. ~~159G-304 [G.S. 159G-4]~~ 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to local government units as provided below. The Office of State Budget and Management shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the ~~Division of Health Services.~~ Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. -- The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. -- The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. ~~159G-306(b)(2) [G.S. 159G-6(b)(2)]~~ 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. -- The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the ~~Division of Health Services~~

Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

(d) Administrative Account. -- The Office of State Budget and Management, from time to time, may allocate funds from the Administrative Account to meet the expenses of the Office of State Budget and Management, Local Government Commission, ~~Division of Health Services~~ Division of Environmental Health and Environmental Management Commission incurred in the administration of this Chapter in excess of normal operating expenses.

Each agency entitled to receive administrative expense funds from the Administrative Account shall prepare an itemized estimate of administrative funds required for the succeeding fiscal year, and the ~~Division of Health Services,~~ Division of Environmental Health, the Local Government Commission and the Environmental Management Commission shall deliver their estimates to the Office of State Budget and Management at least 45 days prior to the beginning of the fiscal year for which the funds are required. The Office of State Budget and Management shall determine the administrative expense funds available and, along with its recommendations, shall deliver the estimates of the ~~Division of Health Services,~~ Division of Environmental Health, the Local Government Commission and of the Environmental Management Commission and its own estimate, if any, to the Advisory Budget Commission at least 30 days prior to the beginning of the fiscal year for which the funds are required. Any administrative expense funds shall be disbursed by the Office of State Budget and Management to the appropriate agency. If the administrative expense funds disbursed to any agency shall prove insufficient, it may apply at any time during the fiscal year for additional funds in the manner above provided.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Sec. 208. G.S. 159G-8 reads as rewritten:

"*§ 159G-8. Application; environmental assessment; notice; hearing.*

(a) Application. -- All applications for revolving loans and grants for water supply systems shall be filed with the ~~Division of Health Services~~ Division of Environmental Health and all applications for revolving loans and grants for wastewater treatment works or wastewater collection systems shall be filed with the Environmental Management Commission. Every applicant shall also file with the Office of State Budget and Management such information concerning the application as the Office of State Budget and Management may

require by rules ~~or regulations~~ adopted pursuant to this Chapter. Any application may be filed in as many categories as it is eligible for consideration under this Chapter. Applications for revolving construction loans or grants for wastewater treatment works and wastewater collection systems, except applications for emergency wastewater loans, shall first be submitted for a loan or grant from the Water Pollution Control Revolving Fund established by G.S. ~~159G-305(c) [G.S. 159G-5(c)].~~ 159G-5(c). If the application is denied, the application shall then be considered for a revolving loan or a grant from the General Wastewater Revolving Loan and Grant account established under ~~159G-306(b)(1) [G.S. 159G-6(b)(1)].~~ G.S. 159-6(b)(1).

The Office of State Budget and Management, the ~~Division of Health Services~~ Division of Environmental Health and the Environmental Management Commission may develop jointly and adopt a standard form of application under this Chapter. Any application for construction grants under the Federal Water Pollution Control Act may be considered as an application for revolving construction loans or grants under G.S. ~~159G-305(c) [G.S. 159G-5(c)]~~ 159G-5(c) and G.S. ~~159G-306(b)(1) [G.S. 159G-6(b)(1)].~~ 159G-6(b)(1). The information required to be set forth in the application shall be sufficient to permit the respective agencies to determine the eligibility of the applicant and to establish the priority of the application, as set forth in this Chapter.

Any applicant shall furnish information in addition or supplemental to the information contained in its application upon request by the receiving agency.

(b) Environmental Assessment. -- Every applicant shall file with its application an assessment setting forth the impact that the project for which funds are sought will have upon the environment of the area within which the project is proposed to be located. The assessment shall set forth the impact of the project upon water resources, other natural resources, land use pattern, and such other factors as the Commission for Health Services or the Environmental Management Commission shall require by duly adopted ~~rules and regulations.~~ rules. Any environmental assessment required as part of an application for grants under the Federal Water Pollution Control Act shall satisfy the requirement of this provision. If, after reviewing the environmental assessment, the ~~Division of Health Services~~ Division of Environmental Health or the Environmental Management Commission concludes that an environmental impact statement is required, then the application shall receive no further consideration until a final environmental impact statement has been completed and approved as provided in Article 1 of Chapter 113A of the General Statutes.

(c) Hearing. -- A public hearing may be held by the receiving agency at any time on any application filed pursuant to G.S. ~~159G-305(c) [G.S. 159G-5(c)], 159G-306(b) [G.S. 159G-6(b)] or 159G-306(c) [G.S. 159G-6(c)]~~ 159G-5(c), 159G-6(b), or 159G-6(c) in accordance with the provisions of this subsection. A public hearing may be held by the receiving agency upon written request from any citizen or taxpayer who is a resident of the county or counties in which the project is proposed to be located if it appears that the public interest will be served by this hearing. The written request shall set forth each objection to the proposed project or other reason for requesting a hearing on the application and shall contain the name and address of the person(s) submitting it. The receiving agency may consider all written objections to the proposed project and other statements along with the application, including any significant adverse effects that the proposed project may have on the environment, and shall determine if the public interest will be served by a hearing. The determination by the receiving agency shall be conclusive; but all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application, whether or not the request is granted."

Sec. 209. G.S. 159G-14 reads as rewritten:

"§ *159G-14. Inspection.*

Inspection of a project for which a revolving loan or grant has been made under this Chapter may be performed by qualified personnel of the ~~Division of Health Services~~ Division of Environmental Health or the Environmental Management Commission or may be performed by qualified professional engineers, registered in this State, who have been approved by the ~~Division of Health Services~~ Division of Environmental Health or the Environmental Management Commission; but no person shall be approved to perform inspections who is an officer or employee of the unit of government to which the revolving loan or grant was made or who is an owner, officer, employee or agent of a contractor or subcontractor engaged in the construction of the project for which the revolving loan or grant was made. For the purpose of payment of inspection fees, inspection services shall be included in the term 'construction cost' as used in this Chapter."

Sec. 210. G.S. 159G-17 reads as rewritten:

"§ *159G-17. Annual reports to Joint Legislative Commission on Governmental Operations.*

(a) The Office of State Budget and Management, the ~~Division of Health Services~~ Division of Environmental Health and the Environmental Management Commission shall prepare and file on or before July 31 of each year with the Joint Legislative Commission on

Governmental Operations a consolidated report for the preceding fiscal year concerning the allocation of revolving loans and grants authorized by this Chapter.

(b) Office of State Budget and Management. -- The portion of the report prepared by the Office of State Budget and Management shall set forth for the preceding fiscal year itemized and total allocations from the Administrative Account for administrative expenses; itemized and total allocations from the Wastewater Accounts of revolving loans and grants authorized by the Environmental Management Commission; and itemized and total allocations from the Water Supply Accounts of revolving loans and grants authorized by the ~~Division of Health Services.~~ Division of Environmental Health. The Office of State Budget and Management shall also prepare a summary report of all allocations made from the Clean Water Revolving Loan and Grant Fund for each fiscal year; the total funds received and allocations made; and unallocated funds on hand in each account as of the end of the preceding fiscal year.

(c) Environmental Management Commission and ~~Division of Health Services.~~ Division of Environmental Health. -- The portions of the report prepared by the Environmental Management Commission and the ~~Division of Health Services~~ Division of Environmental Health shall include:

(1) Identification of each revolving loan and grant made by the receiving agency during the preceding fiscal year; the total amount of the revolving loan and grant commitments; the sums actually paid during the preceding fiscal year to each revolving loan and grant made and to each revolving loan and grant previously committed but unpaid; and the total revolving loan and grant funds paid during the preceding fiscal year.

(2) Itemization of expenditures of any administrative expense funds allocated from the Administrative Account during the preceding fiscal year.

(3) Summarization for all preceding years of the total number of revolving loans and grants made; the total funds committed to such revolving loans and grants; the total sum actually paid to such revolving loans and grants and the total expenditure of administrative expense funds allocated from the Administrative Account.

(4) Assessment and evaluation of the effects that approved projects have had upon water pollution control and water supplies within the purposes of this Chapter and with relation to the total water pollution control and water supply problem.

(d) The report shall be signed by each of the chief executive officers of the State agencies preparing the report."

Sec. 211. G.S. 161-14.3(a) as enacted by Section 1 of Chapter 633 of the 1989 Session Laws reads as rewritten:

"(a) The board of county commissioners may by resolution establish one or more satellite offices of the register of deeds at locations in the county other than the seat of government. Before a satellite office is established, the register of deeds shall certify to the board of county commissioners that the recording and indexing procedures to be used in the satellite office comply in all respects with the law and have been approved by the ~~North Carolina Department of Natural Resources and Community Development, Land Records Management Program, Land Resources Division.~~ Land Resources Division of the Department of Environment, Health, and Natural Resources. The register of deeds also will certify that all instruments presented for registration and other documents presented for recording will be registered or recorded in the order in which they are presented, regardless of the location where they are presented."

Sec. 212. G.S. 162A-23(b) reads as rewritten:

"(b) Responsibility for carrying out the role of State government in regional water supply planning shall be assigned to the Department of ~~Human Resources and the Department of Water and Air Resources [Department of Natural Resources and Community Development],~~ Environment, Health, and Natural Resources. ~~Promotion and coordination of regional water supply systems shall be a shared function of the Department of Water and Air Resources [Department of Natural Resources and Community Development] and the Department of Human Resources, with primary responsibility with regard to sources of raw water supply and transbasin or transwatershed diversions of water being allocated to the Department of Water and Air Resources [Department of Natural Resources and Community Development], and with primary responsibility with regard to other aspects of regional water supply systems being allocated to the Department of Human Resources.~~"

Sec. 213. G.S. 162A-24(a) reads as rewritten:

"(a) There is established under the control and direction of the Department of Administration a Regional Water Supply Planning Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source. The Department may make advances from the fund to any county, municipality, sanitary district, or to counties and municipalities acting collectively or jointly as a regional water authority, for the purpose of meeting the cost of advance planning and engineering work necessary or desirable for the

development of a comprehensive plan for a regional water supply system as defined in this Article. Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the regional water supply system, or from other funds available to the recipient including grants, except when, in the judgment of the Department of ~~Human Resources and of the Department of Water and Air Resources [Department of Natural Resources and Community Development]~~ Environment, Health, and Natural Resources, a proposed plan for development and construction of a countywide or other regional water system is not feasible because of design and construction factors or because available sources of raw water supply are inadequate or because construction of a proposed system is not economically feasible, (but not if the applicant decides not to proceed with construction that has been planned and which the Department of ~~Human Resources and the Department of Water and Air Resources [Department of Natural Resources and Community Development]~~ Environment, Health, and Natural Resources have declared to be feasible)."

Sec. 214. G.S. 162A-24(b) reads as rewritten:

"(b) The Department of Administration shall not make any advance pursuant to this section without first referring the application and proposal to the Department of ~~Human Resources, the State agency responsible for public water supplies,~~ Environment, Health, and Natural Resources for determination as to whether the following conditions ~~set forth below~~ have been ~~met.~~ met: ~~In making such determinations, the Department of Human Resources shall obtain and be guided by the recommendations of the Department of Water and Air Resources [Department of Natural Resources and Community Development] on matters for which that Department has responsibility by law:~~

(1) The proposed area is suitable for development of a regional water supply system from the standpoint of present and projected populations, industrial growth potential, and present and future sources of raw water.

(2) The applicant proposes to undertake long-range comprehensive planning to meet present and projected needs for high quality water service through the construction of a regional water supply system as defined in this Article. The determination by the Department of ~~Human Resources~~ Environment, Health, and Natural Resources that the proposed system would be a 'regional system,' as defined by this Article, shall be conclusive.

(3) The applicant proposes to coordinate planning of the regional water supply with land-use planning in the area, in order that both planning efforts will be compatible.

(4) The applicant proposes to employ an engineer licensed to practice in the State of North Carolina to prepare a comprehensive regional water supply plan, which plan will provide detailed information on source or sources of water to meet projected domestic and industrial water demands; proposed system, including raw water intake(s), treatment plant, storage facilities, distribution system, and other waterworks appurtenances; proposed interconnections with existing systems, and provisions for interconnections with other county, municipal and regional systems; phased development of systems to achieve ultimate objectives if economic feasibility is in question; projected water service areas; proposed equipment; estimates of cost and projected revenues; and methods of financing."

Sec. 215. G.S. 162A-25 reads as rewritten:

"§ *162A-25. Construction of Article.*

This Article shall be construed as providing supplemental authority in addition to the powers of the Department of ~~Human Resources~~ Environment, Health, and Natural Resources under ~~General Statutes Chapter 130,~~ Chapter 130A and Articles 21 and 38 of Chapter 143 of the General Statutes, the powers of the North Carolina Utilities Commission under ~~General Statutes Chapter 62,~~ Chapter 62 of the General Statutes, ~~and the powers of the Department of Water and Air Resources [Department of Natural Resources and Community Development] under Articles 21 and 38 of General Statutes Chapter 143,~~ and any other provisions of law concerning local and regional water supplies."

Sec. 216. G.S. 162A-29(a) reads as rewritten:

"(a) There is established under the control and direction of the Department of Administration a Regional Sewage Disposal Planning Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source. The Department may make advances from the fund to any county, municipality, or sanitary district, or to counties and municipalities acting collectively or jointly as a regional sewer authority, for the purpose of meeting the cost of advance planning and engineering work necessary or desirable for the development of a comprehensive plan for a regional sewage disposal system as defined in this Article. Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the regional sewage disposal system, or

from other funds available to the recipient including grants, except when, in the judgment of the Department of ~~Water and Air Resources [Department of Natural Resources and Community Development]~~ Environment, Health, and Natural Resources, a proposed plan for development and construction of a countywide or other regional sewage disposal system is not feasible because of design and construction factors, or because of the effect that the sewage disposal system discharge will have upon water quality standards, or because construction of a proposed system is not economically feasible, (but not if the applicant decides not to proceed with construction that has been planned and which the Department of ~~Water and Air Resources [Department of Natural Resources and Community Development]~~ Environment, Health, and Natural Resources has declared to be feasible)."

Sec. 217. G.S. 162A-29(b) reads as rewritten:

"(b) The Department of Administration shall not make any advance pursuant to this section without first referring the application and proposal to the ~~State Department of Water and Air Resources [Department of Natural Resources and Community Development],~~ Department of Environment, Health, and Natural Resources ~~the State agency responsible for water pollution control,~~ for determination as to whether the following conditions ~~set forth below~~ have been met:

(1) The proposed area is suitable for development of a regional sewage disposal system from the standpoint of present and projected populations, industrial growth potential, and present and future sources of sewage.

(2) The applicant proposes to undertake long-range comprehensive planning to meet present and projected needs for high quality sewage disposal through the construction of a regional sewage disposal system as defined in this Article. The determination by the Department of ~~Water and Air Resources [Department of Natural Resources and Community Development]~~ Environment, Health, and Natural Resources, that the proposed system would be a 'regional system,' as defined by this Article, shall be conclusive.

(3) The applicant proposes to coordinate planning of the regional sewage disposal system with land-use planning in the area, in order that both planning efforts will be compatible.

(4) The applicant proposes to employ an engineer licensed to practice in the State of North Carolina to prepare a comprehensive regional sewage disposal plan, which plan will provide detailed information on the source or sources of sewage; the proposed system, including all facilities and appurtenances thereto for the collection, transmission,

treatment, purification and disposal of sewage; any proposed interconnection with existing systems, and provisions for interconnections with other county, municipal and regional systems; the phased development of systems to achieve ultimate objectives if economic feasiblility is in question; projected sewage disposal service areas; proposed equipment; estimates of cost and projected revenues; and methods of financing."

Sec. 218. The phrase "Natural Resources and Community Development" is deleted and replaced by the phrase "Environment, Health, and Natural Resources" wherever it occurs in each of the following sections of the General Statutes:

(1) G.S. 7A-343.1. Distribution of copies of the appellate division reports.

(2) G.S. 14-131. Trespass on land under option by the federal government.

(3) G.S. 14-137. Willfully or negligently setting fire to woods and fields.

(4) G.S. 15A-1343. Conditions of probation.

(5) G.S. 20-81. Official license plates.

(6) G.S. 47-30. Plats and subdivisions; mapping requirements.

(7) G.S. 53A-2. Incorporation authorized; information to be set forth; purposes; powers generally.

(8) G.S. 58-27.30. State Fire Commission created; membership.

(9) G.S. 66-58. Sale of merchandise by governmental units.

(10) G.S. 68-43. Authority of Secretary of Natural Resources and Community Development to remove or confine ponies on Ocracoke Island and Shackelford Banks.

(11) G.S. 69-25.5. Methods of providing fire protection.

(12) G.S. 74-38. Commission to file copies of bylaws with Department of Natural Resources and Community Development.

(13) G.S. 74-49. Definitions.

(14) G.S. 74-53. Reclamation plan.

(15) G.S. 74-76. Definitions.

(16) G.S. 75A-5.1. Commercial fishing boats; renewal of number.

(17) G.S. 75A-17. Enforcement of Chapter.

(18) G.S. 76-40. Navigable waters; certain practices regulated.

(19) G.S. 77-13. Obstructing streams a misdemeanor.

(20) G.S. 77-14. Obstructions in streams and drainage ditches.
(21) G.S. 87-85. Definitions.
(22) G.S. 87-94. Civil penalties.
(23) G.S. 90A-37. Classification of wastewater treatment facilities.
(24) G.S. 90A-38. Grades of certificates.
(25) G.S. 90A-39. Operator qualifications and examination.
(26) G.S. 90A-43. Promotion of training and other powers.
(27) G.S. 100-2. Approval of memorials before acceptance by State; regulation of existing memorials, etc.; "work of art" defined; highway markers.
(28) G.S. 100-11. Duties.
(29) G.S. 100-12. Roads, trails, and fences authorized; protection of property.
(33) G.S. 102-1.1. Name and description in relation to 1983 North American Datum.
(34) G.S. 102-8. Administrative agency.
(35) G.S. 102-10. Prior work.
(36) G.S. 102-15. Improvement of land records.
(37) G.S. 102-17. County projects eligible for assistance.
(38) G.S. 104G-22. Inter-Agency Committee.
(39) G.S. 105-122. Franchise or privilege tax on domestic and foreign corporations.
(40) G.S. 105-130.10. Amortization of air-cleaning devices, waste treatment facilities and recycling facilities.
(41) G.S. 105-130.34. Credit for certain real property donations.
(42) G.S. 105-147. Deductions.
(43) G.S. 105-151.12. Credit for certain real property donations.
(44) G.S. 105-277.7. Use-Value Advisory Board.
(45) G.S. 106-202.14. Creation of Board; membership; terms; chairman; quorum; board actions; compensation.
(46) G.S. 106-202.17. Creation of committee; membership; terms; chairman; meetings; committee action; quorum; compensation.
(47) G.S. 113-1. Meaning of terms.
(48) G.S. 113-28.4. Oaths required.
(49) G.S. 113-44.4. Definitions.
(50) G.S. 113-44.9. Definitions.
(51) G.S. 113-60.14. Compact Administrator; North Carolina members of advisory committee.
(52) G.S. 113-60.15. Agreements with noncompact states.

(53) G.S. 113-60.22. Definition.
(54) G.S. 113-60.32. Definitions.
(55) G.S. 113-60.33. Standby duty.
(56) G.S. 113-77.6. (Expires June 30, 1989) Definitions.
(57) G.S. 113-128. Definitions relating to agencies and their powers.
(58) G.S. 113-129.2. Coastal Reserve Program.
(59) G.S. 113-389. Definitions.
(60) G.S. 113A-52. Definitions.
(61) G.S. 113A-74. Appalachian Trails System; connecting or side trails; coordination with the National Trails System Act.
(62) G.S. 113A-75. Assistance under this Article with the National Trails System Act (PL 90-543).
(63) G.S. 113A-85. Definitions.
(64) G.S. 113A-104. Coastal Resources Commission.
(65) G.S. 113A-107. State guidelines for the coastal area.
(66) G.S. 113A-112. Planning grants.
(67) G.S. 113A-153. North Carolina Land Policy Council.
(68) G.S. 113A-164.3. Definitions.
(69) G.S. 113A-166. Rules.
(70) G.S. 113A-167. Existing billboards.
(71) G.S. 113A-169. Condemnation procedure.
(72) G.S. 113A-170. Violation a misdemeanor; injunctive relief.
(73) G.S. 113A-177. Statement of purpose.
(74) G.S. 113A-178. Definitions.
(75) G.S. 113A-183. Forest Development Fund.
(76) G.S. 113A-193. Duties of Secretaries.
(77) G.S. 113A-194. Assessment rates.
(78) G.S. 113A-208. Regulation of mountain ridge construction by counties and cities.
(79) G.S. 113A-212. Assistance to counties and cities under ridge law.
(80) G.S. 113B-3. Composition of Council; appointments; terms of members; qualifications.
(81) G.S. 120-150. Creation; appointment of members.
(82) G.S. 120-161. Facilities and staff.
(83) G.S. 121-4. Powers and duties of the Department of Cultural Resources.
(84) G.S. 122E-4. North Carolina Housing Partnership created; compensation; organization.
(85) G.S. 126-5. Employees subject to Chapter; exemptions.
(86) G.S. 130A-294. Solid waste management program.

(87) G.S. 130B-22. Inter-Agency Committee on Hazardous Waste.

(88) G.S. 136-21. Drainage of highway; application to court; summons; commissioners.

(89) G.S. 136-44.12. Construction and maintenance of roads in areas administered by the Division of State Parks.

(90) G.S. 136-102.3. Filing record of results of test drilling or boring with Secretary of Administration and Secretary of Natural Resources and Community Development.

(91) G.S. 139-5. Creation of soil and water conservation districts.

(92) G.S. 139-7. District board of supervisors -- appointive members; organization of board; certain powers and duties.

(93) G.S. 139-8. Powers of districts and supervisors.

(94) G.S. 139-13. Discontinuance of districts.

(95) G.S. 139-46. Recreational and related aspects of watershed improvement programs.

(96) G.S. 143-116.8. Motor vehicle laws applicable to State Parks and forests road system.

(97) G.S. 143-166.2. Definitions.

(98) G.S. 143-166.7. Applicability of Article.

(99) G.S. 143-166.13. Persons entitled to benefits under Article.

(100) G.S. 143-169. Limitations on publications.

(101) G.S. 143-177.3. Sources of funds.

(102) G.S. 143-211. Declaration of public policy.

(103) G.S. 143-212. Definitions applicable to Article.

(104) G.S. 143-215.3A. Use of application and permit fees.

(105) G.S 143-215.3B. Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund.

(106) G.S. 143-215.16. Permits for water use within capacity use areas -- duration, transfer, reporting, measurement, present use, fees and penalties.

(107) G.S. 143-215.18. Map or description of boundaries of capacity use areas.

(108) G.S. 143-215.40. Resolutions and ordinances assuring local cooperation.

(109) G.S. 143-215.70. Secretary of Natural Resources and Community Development authorized to accept applications.

(110) G.S. 143-215.74F. Program authorized.

(111) G.S. 143-215.77. Definitions.

(111a) G.S. 143-215.94U. Oil spill contingency plan. (as enacted by Section 5 of Chapter 656 of the 1989 Session Laws.)

(112) G.S. 143-240. Creation of Wildlife Resources Commission; districts; qualifications of members.

(113) G.S. 143-243. Organization of the Commission; election of officers; Robert's Rules of Order.

(114) G.S. 143-286.1. Nutbush Conservation Area.

(115) G.S. 143-289. Contributions from certain counties and municipalities authorized; other grants or donations.

(116) G.S. 143-323. Functions of Department of Natural Resources and Community Development.

(116a) G.S. 143-345.6. Land records management program.

(117) G.S. 143-350. Definitions.

(118) G.S. 143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Conservation and Development and of the Director of said Department.

(119) G.S. 143-370. Commission created; membership.

(120) G.S. 143A-11. Principal departments.

(121) G.S. 143B-2. Interim applicability of the Executive Organization Act of 1973.

(122) G.S. 143B-6. Principal departments.

(123) G.S. 143B-86. America's Four Hundredth Anniversary Committee -- members; selection; quorum; compensation.

(124) G.S. 143B-115. John Motley Morehead Memorial Commission -- members; selection; quorum; compensation.

(125) G.S. 143B-130. Roanoke Voyages and Elizabeth II Commission -- powers and duties.

(126) G.S. 143B-131. Roanoke Voyages and Elizabeth II Commission -- members; terms; vacancies; expenses; officers.

(127) G.S. 143B-181. Governor's Advisory Council on Aging -- members; selection; quorum; compensation.

(128) G.S. 143B-282. Environmental Management Commission -- creation; powers and duties.

(129) G.S. 143B-283. Environmental Management Commission -- members; selection; removal; compensation; quorum; services.

(130) G.S. 143B-289.2. Definitions.

(131) G.S. 143B-289.3. Marine Fisheries Commission -- creation; purpose and transfer of function.

(132) G.S. 143B-289.4. Marine Fisheries Commission -- powers and duties.

(133) G.S. 143B-289.5. Marine Fisheries Commission -- members; selection; removal; compensation; quorum; services.

(134) G.S. 143B-289.11. Jurisdictional questions.

(135) G.S. 143B-289.12. Rules of Department continued.

(136) G.S. 143B-295. Soil and Water Conservation Commission -- members; selection; removal; compensation; quorum; services.

(137) G.S. 143B-298. Sedimentation Control Commission -- creation; powers and duties.

(138) G.S. 143B-299. Sedimentation Control Commission -- members; selection; compensation; meetings.

(139) G.S. 143B-308. Forestry Council -- creation; powers and duties.

(140) G.S. 143B-309. Forestry Council -- members; chairman; selection; removal; compensation; quorum; services.

(141) G.S. 143B-311. Parks and Recreation Council -- creation; powers and duties.

(142) G.S. 143B-312. Parks and Recreation Council -- members; chairman; selection; removal; compensation; quorum; services.

(143) G.S. 143B-317. Air Quality Council -- creation; powers and duties.

(144) G.S. 143B-318. Air Quality Council -- members; chairman; selection; removal; compensation; quorum; services.

(145) G.S. 143B-333. North Carolina Trails Committee -- creation; powers and duties.

(146) G.S. 143B-334. North Carolina Trails Committee -- members; selection; removal; compensation.

(147) G.S. 143B-335. North Carolina Zoological Park Council -- creation; powers and duties.

(148) G.S. 143B-336. North Carolina Zoological Park Council -- members; selection; removal; chairman; compensation; quorum; services.

(149) G.S. 143B-407. North Carolina State Commission of Indian Affairs -- membership; term of office; chairman; compensation.

(150) G.S. 143B-411.1. North Carolina Advisory Council on the Eastern Band of the Cherokee -- creation; membership; terms of office.

(151) G.S. 143B-417. North Carolina Internship Council -- creation; powers and duties.
(152) G.S. 143B-426.22. Governor's Management Council.
(153) G.S. 143B-437. Investigation of impact of proposed new and expanding industry.
(154) G.S. 146-8. Disposition of mineral deposits in State lands under water.
(155) G.S. 146-30. Application of net proceeds.
(156) G.S. 148-26. State policy on employment of prisoners.
(157) G.S. 156-59. Board of viewers appointed by clerk.
(158) G.S. 156-74. Adjudication upon final report.
(159) G.S. 156-76. Compensation of board of viewers.
(160) G.S. 156-83. Superintendent of construction.
(161) G.S. 159C-7. Approval of project.
(162) G.S. 159D-7. Approval of project.
(163) G.S. 161-22.2. Parcel identifier number indexes.

Sec. 219. The phrase "Human Resources" is deleted and replaced by the phrase "Environment, Health, and Natural Resources" wherever it occurs in each of the following sections of the General Statutes:

(1) G.S. 20-4.01. Definitions.
(2) G.S. 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.
(3) G.S. 48-29. Change of name; report to State Registrar; new birth certificate to be made.
(4) G.S. 48-36. Adoption of persons who are 18 or more years of age; change of name; clerk's certificate and record; notation on birth certificate; new birth certificate.
(5) G.S. 51-11. Who may execute certificate; form.
(6) G.S. 75-6. Violation a misdemeanor; punishment.
(6a) G.S. 90-233. Practice of dental hygiene.
(7) G.S. 90A-21. Water Treatment Facility Operators Board of Certification.
(8) G.S. 90A-22. Classification of water treatment facilities; notification of users.
(9) G.S. 90A-23. Grades of certificates.
(10) G.S. 90A-24. Operator qualifications and examination.
(11) G.S. 90A-28. Promotion of training and other powers.
(12) G.S. 90A-30. Penalties; remedies; contested cases.
(13) G.S. 95-126. Short title and legislative purpose.
(14) G.S. 95-131. Development and promulgation of standards; adoption of federal standards and regulations.

(15) G.S. 97-61.1. First examination of and report on employee having asbestosis or silicosis.
(16) G.S. 104E-5. Definitions.
(17) G.S. 104E-7. Radiation Protection Commission -- Creation and powers.
(18) G.S. 104E-8. Radiation Protection Commission -- Members; selections; removal; compensation; quorum; services.
(19) G.S. 104E-9. Powers and functions of Department of Human Resources.
(20) G.S. 104E-10.1. Additional requirements for low-level radioactive waste facilities.
(21) G.S. 104E-13. Administrative procedures and judicial review.
(22) G.S. 104E-15. Transportation of radioactive materials.
(23) G.S. 104E-17. Payments to State and local agencies.
(24) G.S. 104E-24. Administrative penalties.
(25) G.S. 104F-4. Advisory Committee.
(26) G.S. 104G-11. Technology, license application, and environmental impact statement.
(27) G.S. 105-122. Franchise or privilege tax on domestic and foreign corporations.
(28) G.S. 105-130.10. Amortization of air-cleaning devices, waste treatment facilities and recycling facilities.
(29) G.S. 105-147. Deductions. (As amended by Section 3 of Chapter 37 of the 1989 Session Laws and as amended by Section 3 of Chapter 148 of the 1989 Session Laws; provided that this section shall not apply to G.S. 105-147(25a) as enacted by Section 6 of Chapter 533 of the 1989 Session Laws.)
(30) G.S. 106-65.23. Structural Pest Control Division of Department of Agriculture recreated; Director; Structural Pest Control Committee created; appointment; terms; quorum.
(31) G.S. 106-168.5. Duties of Commissioner upon receipt of application; inspection committee.
(32) G.S. 106-266.6. Definitions.
(33) G.S. 115C-522. Provision of equipment for buildings.
(34) G.S. 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.
(35) G.S. 130B-2. Definitions.
(36) G.S. 143-300.8. Defense of local sanitarians.
(37) G.S. 148-10. Department of Human Resources to supervise sanitary and health conditions of prisoners.

(38) G.S. 159C-7. Approval of project.

(39) G.S. 159D-7. Approval of project.

(40) G.S. 162A-33. Procedure for creation; resolutions and petitions for creation; notice to and action by Commission for Health Services; notice and public hearing; resolutions creating districts; actions to set aside proceeding.

(41) G.S. 162A-35. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions questioning validity of elections.

(42) G.S. 166A-6.1. Emergency planning; charge.

Sec. 220. Chapter 91 of the 1989 Session Laws is amended by deleting the phrase "Department of Human Resources" wherever it occurs and substituting the phrase "Department of Environment, Health, and Natural Resources".

Sec. 221. Chapter 574 of the 1989 Session Laws is amended by deleting the phrase "Department of Natural Resources and Community Development" wherever it occurs and substituting the phrase "Department of Environment, Health, and Natural Resources".

Sec. 222. Section 3 of Chapter 603 of the 1989 Session Laws reads as rewritten:

"Sec. 3. ~~The Department of Human Resources and the Department of Natural Resources and Community Development shall work cooperatively in the implementation of this act. The Department of Natural Resources and Community Development or its successor~~ The Department of Environment, Health, and Natural Resources shall report semi-annually beginning 1 October 1989 to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission as to progress in the implementation of this act."

Sec. 223. (a) References in the Session Laws to any department, division, or other agency which is transferred by this act shall be deemed to refer to the successor department, division, or other agency. Every Session Law which refers to any department, division, or other agency to which this act applies or which relates to any power, duty, function, or obligation of any such department, division or agency and which continues in effect after this act becomes effective shall be construed so as to be consistent with this act.

(b) The Revisor of Statutes is authorized to correct any reference or citation in the General Statutes to any portion of the General Statutes which is recodified, transferred, subdivided, or amended by this act by deleting incorrect references and substituting correct references.

(c) The Revisor of Statutes is authorized to delete any reference to the Department of Natural Resources and Community Development, the Secretary of Natural Resources and Community Development, the

Department of Human Resources, the Secretary of Human Resources, or their predecessors in any portion of the General Statutes to which conforming amendments are not made by this act and to substitute, as appropriate and consistent with this act, any of the following phrases: Department of Environment, Health, and Natural Resources; Secretary of Environment, Health, and Natural Resources; Department of Human Resources; Secretary of Human Resources; Department of Commerce; or Secretary of Commerce.

Sec. 224. All statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of any agency which is transferred pursuant to this act shall be transferred in their entirety. Any transfer affecting any agency to which this act applies which is not authorized by this act, including any transfer under subdivision (10) of Section 5 of Article III of the Constitution of North Carolina, is hereby specifically disapproved and is void.

Sec. 225. (a) The Environmental Review Commission may continue the study of environmental agency consolidation and reorganization. The study of environmental agency consolidation shall include, but is not limited to:

(1) Monitoring the implementation of this act;

(2) Evaluation of the organization, programs, and operation of the Department of Environment, Health, and Natural Resources;

(3) Evaluation of the organization, functions, powers, and duties of the components of the Department of Environment, Health, and Natural Resources, including boards, commissions, councils, and regional offices; and

(4) Recodification of the General Statutes relating to the environment and environmental agencies.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation made by the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

Sec. 226. The provisions of G.S. 150B-(c)(2), as amended by Section 2 of Chapter 538 of the 1989 Session Laws, shall apply to any agency which is a part of the Department of Human Resources on 30 June 1989, even though such agency is subsequently transferred to the Department of Environment, Health, and Natural Resources or to any other department.

Sec. 227. Every act of any department, agency, or officer to which this act applies which occurred prior to the date this act is ratified and which is otherwise valid continues to be valid and effective

notwithstanding any change in name or transfer of such department, agency, or officer.

Sec. 228. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each department and agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that department or agency.

Sec. 229. This act shall become effective 1 July 1989.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

S.B. 51 **CHAPTER 728**

AN ACT TO ENHANCE THE SIMPLICITY AND FAIRNESS OF THE STATE INCOME TAX SYSTEM.

The General Assembly of North Carolina enacts:

Section 0.1. This act shall be known as The Tax Fairness Act of 1989.

Sec. 0.2. The following is a table of contents for this act. It is designed for reference only; the descriptive headings in the table of contents and throughout the act do not affect the scope or application of the act.

Part I. Income Tax Reform.
A. Individual Income Tax Act Amendments.
B. S Corporation Income Tax Act Amendments.
C. Income Tax Act for Estates and Trusts Amendments.
D. Chapter 105 Conforming Amendments.
Part II. Savings Clause and Effective Date.

Part I.

Income Tax Reform.

A. Individual Income Tax Act Amendments.

Sec. 1.1. G.S. 105-133 reads as rewritten:

"§ *105-133. Short title.*

This Division of the income tax Article shall be known ~~and may be cited~~ as the Individual Income Tax Act."

Sec. 1.2. G.S. 105-134 reads as rewritten:

"§ *105-134. Purpose.*

The general purpose of this Division is to impose a tax for the use of the State government upon the ~~net~~ taxable income ~~in excess of the exemptions herein allowed~~ collectible annually:

(1) Of every resident of this State.

(2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any

interest in real or tangible personal property in this State or deriving income from a business, trade, profession, or occupation carried on in this State."

Sec. 1.3. G.S. 105-135 through G.S. 105-149 are repealed.

Sec. 1.4. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding after G.S. 105-134 the following new sections to read:

"*§ 105-134.1. Definitions.*

The following definitions apply in this Division:

(1) Code. The Internal Revenue Code as enacted as of January 1, 1989, including any provisions enacted as of that date which become effective either before or after that date, but not including sections 63(c)(4) and 151(d)(3).

(2) Department. The Department of Revenue.

(3) Educational institution. An educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(4) Fiscal year. Defined in section 441(e) of the Code.

(5) Gross income. Defined in section 61 of the Code.

(6) Head of household. Defined in section 2(b) of the Code.

(7) Individual. A natural person.

(8) Married individual. An individual who is married and is considered married as provided in section 7703 of the Code.

(9) Nonresident individual. An individual who is not a resident of this State.

(10) North Carolina taxable income. Defined in G.S. 105-134.5.

(11) Person. An individual, a fiduciary, a partnership, or a corporation. The term includes an officer or employee of a corporation or a member or employee of a partnership who, as officer, employee, or member, is under a duty to perform an act in meeting the requirements of this Division.

(12) Resident. An individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the State for more than 183 days raises no presumption that the

individual is not a resident. A resident who removes from the State during a taxable year is considered a resident until he has both established a definite domicile elsewhere and abandoned any domicile in this State. The fact of marriage does not raise any presumption as to domicile or residence.

(13) Retirement benefits. Amounts paid to a former employee or the beneficiary of a former employee under a written retirement plan established by the employer to provide payments to an employee or the beneficiary of an employee after the end of the employee's employment with the employer where the right to receive the payments is based upon the employment relationship. With respect to a self-employed individual or the beneficiary of a self-employed individual, the term means amounts paid to the individual or beneficiary of the individual under a written retirement plan established by the individual to provide payments to the individual or the beneficiary of the individual after the end of the self-employment. For the purpose of this subdivision, the term 'employee' includes a volunteer worker.

(14) S Corporation. Defined in G.S. 105-131(b).

(15) Secretary. The Secretary of Revenue.

(16) Taxable income. Defined in section 63 of the Code.

(17) Taxable year. Defined in section 441(b) of the Code.

(18) Taxpayer. An individual subject to the tax imposed by this Division.

(19) This State. The State of North Carolina.

"§ *105-134.2. Individual income tax imposed.*

(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

(1) For married individuals who file a joint return under G.S. 105-152.1 and for surviving spouses, as defined in section 2(a) of the Code:

On the North Carolina taxable income up to twenty-one thousand two hundred fifty dollars ($21,250), six percent (6%); and

On the excess over twenty-one thousand two hundred fifty dollars ($21,250), seven percent (7%).

(2) For heads of households, as defined in section 2(b) of the Code:

On the North Carolina taxable income up to seventeen thousand dollars ($17,000), six percent (6%); and

On the excess over seventeen thousand dollars ($17,000), seven percent (7%).

(3) For unmarried individuals other than surviving spouses and heads of households:

On the North Carolina taxable income up to twelve thousand seven hundred fifty dollars ($12,750), six percent (6%); and

On the excess over twelve thousand seven hundred fifty dollars ($12,750), seven percent (7%).

(4) For married individuals who do not file a joint return under G.S. 105-152.1:

On the North Carolina taxable income up to ten thousand six hundred twenty-five dollars ($10,625), six percent (6%); and

On the excess over ten thousand six hundred twenty-five dollars ($10,625), seven percent (7%).

"§ *105-134.3. Year of assessment.*

The tax imposed by this Division shall be assessed, collected, and paid in the taxable year following the taxable year for which the assessment is made, except as provided to the contrary in Article 4A of this Chapter.

"§ *105-134.4. Taxable year.*

A taxpayer shall compute North Carolina taxable income on the basis of the taxable year used in computing the taxpayer's income tax liability under the Code.

"§ *105-134.5. North Carolina taxable income defined.*

(a) Residents. For residents of this State, the term 'North Carolina taxable income' means taxable income as calculated under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.

(b) Nonresidents. For nonresident individuals, the term 'North Carolina taxable income' means taxable income as calculated under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which is the taxpayer's gross income as calculated under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that gross income, as adjusted, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or is derived from a business, trade, profession, or occupation carried on in this State.

(c) Part-year Residents. If an individual was a resident of this State for only part of the taxable year, having moved into or removed from the State during the year, the term 'North Carolina taxable income' has the same meaning as in subsection (b) except that the numerator shall include gross income, adjusted as provided in G.S.

105-134.6 and G.S. 105-134.7, derived from all sources during the period the individual was a resident.

(d) S Corporations and Partnerships. In order to calculate the numerator of the fraction provided in subsection (b), the amount of a shareholder's pro rata share of S Corporation income that is includable in the numerator shall be the shareholder's pro rata share of the S Corporation's income attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in subsection (b) for a member of a partnership or other unincorporated business with one or more nonresident members that operates in one or more other states, the amount of the member's distributive share of income of the business that is includable in the numerator shall be determined by multiplying the total net income of the business by the ratio ascertained under the provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Code which were incurred in the operation of the business.

"*§ 105-134.6. Adjustments to taxable income.*

(a) S Corporations. The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be subject to the adjustments provided in subsections (b) and (c) of this section.

(b) Deductions. The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in gross income:

(1) Interest upon the obligations of (i) the United States or its possessions, (ii) this State or a political subdivision of this State, or (iii) a nonprofit educational institution organized or chartered under the laws of this State.

(2) Interest upon obligations and gain from the disposition of obligations to the extent the interest or gain is exempt from tax under the laws of this State.

(3) Benefits received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.

(4) Any amount not to exceed one thousand five hundred dollars ($1,500) received by the taxpayer during the taxable year as compensation for the performance of duties as a member of the North Carolina organized militia, the national guard as defined in G.S. 127A-3.

(5) Refunds of State, local, and foreign income taxes included in the taxpayer's gross income.

(c) Additions. The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in gross income:

(1) Interest upon the obligations of states, other than this State, and their political subdivisions.

(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code. The Secretary shall report to the 1991 General Assembly all provisions under the Code for taxing certain amounts separately and shall recommend whether those amounts should be taxed separately under this Division or should be added to taxable income in calculating North Carolina taxable income.

(3) Any amount deducted from gross income under section 164 of the Code as State, local, or foreign income tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.

(4) The amount by which the taxpayer's standard deduction has been increased under section 63(c)(4) of the Code and the amount by which the taxpayer's personal exemptions have been increased under section 151(d)(3) of the Code.

"§ *105-134.7. Transitional adjustments.*

(a) The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

(1) Amounts that were included in the basis of property under federal tax law but not under State tax law before January 1, 1989, shall be added to taxable income in the year the taxpayer disposes of the property.

(2) Amounts that were included in the basis of property under State tax law but not under federal tax law before January 1, 1989, shall be deducted from taxable income in the year the taxpayer disposes of the property.

(3) Amounts that were recognized as income under federal law but not under State law due to a taxpayer's use of the installment method set out in G.S. 105-142(f) prior to January 1, 1989, shall be added to taxable income in the taxpayer's first taxable year beginning on or after January

1, 1989. Amounts that were recognized as income under State law but not under federal law due to a taxpayer's use of a different installment method prior to January 1, 1989, shall be deducted from taxable income in the taxpayer's first taxable year beginning on or after January 1, 1989.

(4) Losses in the nature of net economic losses sustained in any or all of the five taxable years preceding the taxpayer's first taxable year beginning on or after January 1, 1989, arising from business transactions, business capital, or business property, may be deducted from taxable income subject to the limitations contained in former G.S. 105-147(9)a., c., and d. (repealed).

(5) The amount of any net operating loss for a taxable year beginning on or after January 1, 1989, carried back to a taxable year beginning before January 1, 1989, pursuant to section 172 of the Code may be deducted from taxable income in the taxable year following the taxable year for which the loss occurred.

(6) A loss or deduction that was incurred or paid and deducted from State taxable income in a taxable year beginning before January 1, 1989, and is carried forward and deducted in a taxable year beginning on or after January 1, 1989, under the Code shall be added to taxable income.

(7) The transitional adjustments provided in Division I-S of this Article shall be made with respect to a shareholder's pro rata share of S Corporation income.

(b) The Secretary may by rule require other adjustments to be made to taxable income as necessary to assure that the transition to the tax changes effective January 1, 1989, will not result in double taxation of income, exemption of otherwise taxable income from taxation under this Division, or double allowance of deductions."

"*§ 105-134.8. Inventory.*

Whenever, in the opinion of the Secretary, it is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by the taxpayer as prescribed by the Secretary, conforming as nearly as possible to the best accounting practice in the trade or business and most clearly reflecting the income."

Sec. 1.5. G.S. 105-151 reads as rewritten:

"*§ 105-151. Tax credits for income taxes paid to other states by individuals.*

(a) ~~Individuals who are residents~~ An individual who is a resident of this State ~~shall be allowed~~ is allowed a credit against the taxes imposed by this ~~division~~ Division for income taxes imposed by and paid to

another state or country on income taxed under this ~~division,~~ Division, subject to the following conditions:

(1) The credit shall be allowed only for taxes paid to ~~such other~~ another state or country on income derived from sources within ~~such~~ that state or country ~~which~~ that is taxed under ~~the~~ its laws ~~thereof~~ irrespective of the residence or domicile of the recipient; provided, that whenever a taxpayer who is deemed to be a resident of this State under the provisions of this ~~division~~ Division ~~and who~~ is deemed also to be a resident of another state or country under the laws of ~~such other~~ that state or ~~country~~ country, the Secretary ~~of Revenue~~ may, in his discretion, allow a credit against the taxes imposed by this ~~division~~ Division for ~~such~~ taxes imposed by and paid to ~~such~~ the other state or country on income taxed under this ~~division.~~ Division.

(2) The fraction of the gross ~~income for North Carolina income tax purposes which~~ income, as calculated under the Code and adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, that is subject to income tax in another state or country shall be ~~ascertained~~ ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by ~~such~~ that fraction. The credit allowed shall be either the product thus calculated or the income tax actually paid the other state or ~~country~~ country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed ~~must~~ shall be filed with the Secretary ~~of Revenue~~ at, or prior to, the time credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for ~~such~~ the taxes so credited or refunded shall be due and payable from the taxpayer ~~within 30 days from the date of the receipt of the refund or notice of the credit. If the amount of tax is not paid within 30 days of receipt or notice the taxpayer~~ and shall be subject to the penalties and interest ~~on delinquent payments~~ provided ~~for~~ in Subchapter I of this Chapter."

Sec. 1.6. G.S. 105-151.1 reads as rewritten:

"§ 105-151.1. Tax credit for construction of dwelling units for handicapped persons.

There shall be allowed to resident owners of multifamily rental units located in North Carolina as a credit against the tax imposed by this ~~Division.~~ Division an amount equal to five hundred fifty dollars ($550.00) for each dwelling unit constructed by ~~such~~ the resident owner ~~which~~ that conforms to the recommendations of section (11x) of the North Carolina Building Code for the taxable year within which the construction of ~~such~~ the dwelling units is completed; provided, that credit will be allowed under this section only for the number of ~~such~~ dwelling units completed during the taxable year ~~which~~ that were required to be built in compliance with section (11x) of the North Carolina Building Code; provided further, that if the credit allowed by this section exceeds the tax imposed by this Division reduced by all other credits allowed by ~~the provisions of~~ this Division, ~~such~~ the excess shall be allowed as a credit against the tax imposed by this Division for the next succeeding year; and provided further, that in order to secure the credit allowed by this section the taxpayer shall file with ~~his~~ the income tax return for the taxable year with respect to which ~~such~~ the credit is to be claimed, a copy of the occupancy permit on the face of which there shall be recorded by the building inspector the number of units completed during the taxable year ~~which~~ that conform to section (11x) of the North Carolina Building Code. ~~When he has recorded~~ After recording the number of ~~such~~ units on the face of the occupancy permit, the building inspector shall promptly ~~make and~~ forward a copy of the permit to the Special Office for the Handicapped, Department of Insurance."

Sec. 1.7. G.S. 105-151.2 reads as rewritten:

"§ 105-151.2. Credit ~~against personal income tax~~ for solar hot water, ~~heating~~ heating, and cooling.

(a) ~~Any person (to include partnerships)~~ A person or partnership who causes to be constructed or installed a solar hot water, ~~heating~~ heating, or cooling system in any ~~residence or other~~ building in North Carolina shall be allowed as a credit against the tax imposed by this ~~Division.~~ Division an amount equal to twenty-five percent (25%) of the installation and equipment cost of the solar hot water, ~~heating~~ heating, or cooling equipment; ~~provided;~~ provided, that the credit allowed under this section ~~shall~~ may not exceed one thousand dollars ($1,000) per system or per year on any single building or for each family dwelling unit of a multi-dwelling building which is individually metered for electric power or natural gas or with separate furnace for oil heat paid for by the occupant; provided further, that to obtain the credit the taxpayer must own or control the use of the building at the time of the installation, except that in the case of a building

constructed or modified for sale in which a solar system is constructed or installed, the credit shall be allowed to the owner who first occupies the building for use after the construction or installation of the system or the owner-lessor who first leases the building for use after the construction or installation of the system; provided further, that the credit shall not be allowed to the extent that any of the cost of the system was provided by federal, State, or local grants; and provided further, that if the credit allowed by this section exceeds the taxes imposed by this Division reduced by all other credits allowed by the provisions of this Division, ~~such~~ the excess shall be allowed against the taxes imposed by this Division for the next three succeeding years.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one-half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, ~~such~~ that spouse may claim the credit allowed by this section.

(c) For the purpose of this section, the term 'solar hot water, ~~heating~~ heating, and cooling equipment' means any hot water, heating, cooling, or heating and cooling equipment which meets the definitive performance criteria established by the U.S. Secretary of the Treasury or any other performance criteria approved and published by the Secretary of Revenue, or passive solar systems that meet the eligibility criteria approved and published by the Secretary of Revenue."

Sec. 1.8. G.S. 105-151.4 is repealed.

Sec. 1.9. G.S. 105-151.5 reads as rewritten:

"*§ 105-151.5. Credit ~~against personal income tax~~ for conversion of industrial boiler to wood fuel.*

~~Any~~ A person who modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one ~~which~~ that is capable of burning wood shall be allowed as a credit against the tax imposed by this ~~Division.~~ Division an amount equal to fifteen percent (15%) of the installation and equipment cost of ~~such~~ the conversion; provided, that in order to secure the credit allowed by this section, the taxpayer must own or control the business in which ~~such~~ the boiler or kiln is used at the time of ~~such~~ the conversion and payment in part or in whole for ~~such~~

the installation and equipment must be made by the taxpayer during the ~~tax~~ taxable year for which the credit is ~~claimed; and the~~ claimed. The amount of credit allowed for any one ~~income year shall be limited to~~ taxable year may not exceed fifteen percent (15%) of ~~such~~ the costs paid during the ~~year; and the~~ year. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this Division, the excess may be carried forward and applied to the tax imposed under this Division for the succeeding five years."

Sec. 1.10. The catch line of G.S. 105-151.6 reads as rewritten:

"*§ 105-151.6. Credit ~~against personal income tax~~ for construction of a fuel ethanol distillery.*"

Sec. 1.11. G.S. 105-151.6A is repealed.

Sec. 1.12. G.S. 105-151.7 reads as rewritten:

"*§ 105-151.7. Credit ~~against personal income tax~~ for installation of a hydroelectric generator.*

(a) ~~Any~~ A person who constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the installation and equipment costs of the hydroelectric generator. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under

G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, ~~such~~ that spouse may claim the credit allowed by this section.

(c) The term 'installation costs' includes spillway and other site construction and modifications necessary to accommodate the hydroelectric generator.

(d) As used in this section, 'hydroelectric generator' means a machine that produces electricity by water power or by the friction of water or steam."

Sec. 1.13. G.S. 105-151.8 reads as rewritten:

"*§ 105-151.8. Credit ~~against personal income tax~~ for installation of solar equipment for the production of industrial or process heat.*

(a) ~~Any~~ A person who constructs or installs solar equipment for the production of heat in the manufacturing or service processes of his business located in this State shall be allowed as a credit against the tax imposed by this Division an amount equal to twenty percent (20%) of the installation and equipment costs of the solar equipment. The credit allowed under this section may not exceed eight thousand dollars ($8,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar equipment is installed. The credit allowed by this section may not exceed the amount of ~~the~~ tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payment of tax made by or on behalf of the taxpayer. In no case shall a tax credit be allowed ~~both~~ under ~~the provisions of~~ both this section and G.S. 105-151.2.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.2. Where only one spouse is required to file a North Carolina income tax return, ~~such~~ that spouse may claim the credit allowed by this section.

(c) As used in this section, 'solar equipment' means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun."

Sec. 1.14. G.S. 105-151.9 reads as rewritten:

"§ 105-151.9. Credit ~~against personal income tax~~ for installation of a wind energy device.

(a) ~~Any~~ A person who constructs or installs a wind energy device for the production of electricity at a site located in this State shall be allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the installation and equipment costs of the wind energy device. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, ~~such~~ that spouse may claim the credit allowed by this section.

(c) As used in this section, 'wind energy device' means ~~equipment (and~~ equipment, and parts ~~solely related~~ related solely to the functioning of the ~~equipment)~~ equipment, that, when installed on a site, ~~transmits or uses~~ transmit or use wind energy to generate electricity."

Sec. 1.15. G.S. 105-151.10 reads as rewritten:

"§ 105-151.10. Credit ~~against personal income tax~~ for construction of a methane gas facility.

(a) ~~Any~~ A person who constructs in North Carolina a facility for the production of methane gas from renewable biomass resources shall be allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the installation and equipment costs of construction. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control

the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, ~~such~~ that spouse may claim the credit allowed by this section.

(c) As used in this section, 'renewable biomass resources' means organic matter produced by terrestrial and aquatic plants and animals such as standing vegetation, aquatic crops, forestry and agricultural residues and animal wastes that can be used for the production of energy."

Sec. 1.16. G.S. 105-151.11 reads as rewritten:

"*§ 105-151.11. Credit ~~against personal income tax~~ for child care and certain employment-related expenses.*

~~(a) Any person who maintains a household which includes as a member one or more qualifying individuals shall be allowed as a credit against the tax imposed by this Division an amount equal to seven percent (7%) of the employment-related expenses as defined in subdivision (b)(2) herein.~~

~~(b) For the purposes of this section:~~

~~(1) The term "qualifying individual" means:~~

~~a. A dependent of the taxpayer who is under the age of 15 and with respect to whom the taxpayer is entitled to a deduction under G.S. 105-149(a)(5);~~

~~b. A dependent of the taxpayer who is physically or mentally incapable of caring for himself; or~~

~~c. The spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself.~~

~~(2) The term "employment-related expenses" means amounts paid for expenses for household service and for the care of a qualifying individual, but only if such expenses are incurred to enable the taxpayer to be gainfully employed. The term includes expenses incurred for services outside the taxpayer's household if the expenses incurred are for~~

the care of a qualifying individual described in (b)(1)a. or a qualifying individual described in (b)(1)b. or c. who regularly spends at least eight hours each day in the taxpayer's household.

(3) a. For the purposes of this section, an individual shall be treated as maintaining a household for any period only if over half of the cost of maintaining the household during such period is furnished by such individual.

b. In the case of a married person living with his or her spouse and such spouse is maintaining the household, the credit provided for herein shall be allowed with respect to employment-related expenses in connection with any qualifying individuals, except as limited herein, of the spouse not maintaining the household.

(4) If a child (as defined in G.S. 105-149(a)(5)) who is under the age of 15 or who is physically or mentally incapable of caring for himself receives over half of his support during the calendar year from his parents who are divorced or separated with the intent to remain separate and apart, and such child is in the custody of one or both of his parents for more than one half of the calendar year, in the case of any taxable year beginning in such calendar year such child shall be treated as being a qualifying individual described in subparagraph a or b of subdivision (b)(1), as the case may be, with respect to that parent who has custody for a longer period during such calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to such other parent.

(b1) The amount of employment-related expenses for which a credit may be claimed may not exceed two thousand four hundred dollars ($2,400) if the taxpayer's household includes one qualifying individual, and may not exceed four thousand eight hundred dollars ($4,800) if the taxpayer's household includes more than one qualifying individual.

(c) (1) If the taxpayer is married and living with his spouse for any period during the taxable year, there shall be taken into account employment-related expenses incurred during any month of such period only if:

a. Both spouses are gainfully employed on a substantially full- time basis, or one spouse is gainfully employed on a substantially full-time basis and the other spouse is a full-time student, which shall mean an individual who during each of five

~~calendar months during the taxable year is a full-time student at an educational institution, or~~

~~b. The spouse is a qualifying individual described in subdivision (b)(1)c.~~

~~(2) No credit shall be allowed under this section with respect to any amount paid by the taxpayer to an individual with respect to whom a deduction is allowable under G.S. 105-149(a)(5) to the taxpayer or his spouse, or who is a child of the taxpayer (within the meaning of G.S. 105-149(a)(5)) who has not attained the age of 19 at the close of the taxable year.~~

~~(3) In the case of employment-related expenses incurred during any taxable year solely with respect to a qualifying individual (other than an individual who is also described in subdivision (b)(1)a), the amount of such expenses which may be taken into account for purposes of this section shall be reduced:~~

~~a. If such individual is described in subdivision (b)(1)b, by the amount by which the sum of:~~

~~1. Such individual's adjusted gross income for such taxable year, and~~

~~2. The disability payments received by such individual during such year, exceed one thousand dollars ($1,000), or~~

~~b. In the case of a qualifying individual described in subdivision (b)(1)c, by the amount of disability payments received by such individual during the taxable year.~~

~~For purposes of this paragraph, the term "disability payment" means a payment (other than a gift) which is made on account of the physical or mental condition of an individual and which is not included in gross income.~~

~~(d) If a husband and wife are living together at the end of the taxable year, no credit under this section shall be allowed unless they file a combined return for the year.~~

(a) A person who is allowed a credit against federal income tax for a percentage of employment-related expenses under section 21 of the Code shall be allowed as a credit against the tax imposed by this Division an amount equal to the applicable percentage of the employment-related expenses as defined in section 21(b)(2) of the Code. For employment-related expenses that are incurred only with respect to one or more dependents who are seven years old or older and are not physically or mentally incapable of caring for themselves, the applicable percentage is seven percent (7%). For employment-

related expenses with respect to any other qualifying individual, the applicable percentage is ten percent (10%).

(b) The amount of employment-related expenses for which a credit may be claimed may not exceed two thousand four hundred dollars ($2,400) if the taxpayer's household includes one qualifying individual, as defined in section 21(b)(1) of the Code, and may not exceed four thousand eight hundred dollars ($4,800) if the taxpayer's household includes more than one qualifying individual.

~~(e)~~(c) No credit shall be allowed under this section unless the taxpayer completes and attaches to ~~his~~ the tax return the necessary form or forms as may be required by the Secretary. ~~Secretary of Revenue, nor shall any deduction be allowed under G.S. 105-147(11) for amounts claimed under this subdivision.~~ No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code.

~~(f)~~(d) The credit allowed by this section ~~shall~~ may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer.

~~(g)~~(e) No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State."

Sec. 1.17. G.S. 105-151.12 reads as rewritten:

"*§ 105-151.12. Credit for certain real property donations.*

(a) ~~Any~~ A person ~~that~~ who makes a qualified donation of interests in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes, shall be allowed as a credit against the ~~taxes~~ tax imposed by this Division an amount equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, a local ~~government~~ government, or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions ~~pursuant to G.S. 105-147(15) or (16);~~ under the Code; provided, however, that lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under such regulations or ordinances ~~shall~~ are not ~~be~~ eligible for this credit. The credit allowed under this section may not exceed five thousand dollars ($5,000). To support the credit allowed by this section, the taxpayer shall file with the income tax return for the taxable year in which the credit is ~~claimed,~~ claimed a certification by the Department of Natural Resources and Community Development that the property donated is

suitable for one or more of the valid public benefits set forth by this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

~~(c)~~ Any unused portion of this credit may be carried forward for the next succeeding five years.

~~(d) The fair market value, or any portion thereof, of a qualifying donation that is not eligible for a credit pursuant to this section may be considered as a charitable contribution pursuant to G.S. 105-147(15) or (16). That portion of the donation allowed as a credit pursuant to this section shall not be eligible as a charitable contribution.~~

(c) No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code.

~~(e)~~(d) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, ~~such~~ that spouse may claim the credit allowed by this section.

~~(f)~~(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before December 31, 1990, to qualify for the credit allowed by this section."

Sec. 1.18. G.S. 105-151.13 reads as rewritten:

"*§ 105-151.13. Credit for conservation tillage equipment.*

(a) ~~Any~~ A person who purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the cost of the equipment. This credit may not exceed two thousand five hundred dollars ($2,500) for any ~~income~~ taxable year. The credit may ~~only~~ be claimed only by the first purchaser of the equipment and may not be claimed by a person who purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except tax payments made by or on behalf of the taxpayer.

If the credit allowed by this section exceeds the tax imposed under this Division, the excess may be carried forward and applied to the tax imposed under this Division for the next succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of the credit allowable.

(b) As used in this section, 'conservation tillage equipment' means:

(1) A planter such as a planter commonly known as a 'no-till' planter designed to minimize disturbance of the soil in planting crops or trees, including equipment that may be attached to equipment already owned by the taxpayer; ~~or,~~ or

(2) Equipment designed to minimize disturbance of the soil in reforestation site preparation, including equipment that may be attached to equipment already owned by the taxpayer; provided, however, this shall include only those items of equipment generally known as a 'KG-Blade', a 'drum-chopper', or a 'V-Blade'.

(c) In the case of conservation tillage equipment owned jointly by a husband and wife, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one-half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section."

Sec. 1.19. G.S. 105-151.14 reads as rewritten:

"§ *105-151.14. Credit for gleaned crop.*

(a) ~~Any~~ A person who grows a crop and permits the gleaning of the crop shall be allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except tax payments made by or on behalf of the taxpayer. ~~No deduction is allowed under G.S.105-147(15) or (16) for the items for which a credit is claimed under this section.~~ No credit is allowed under this section for amounts that were deducted from gross income in calculating taxable income under the Code. Any unused portion of the credit may be carried forward for the next succeeding five years.

(b) The following definitions apply to this section:

(1) 'Gleaning' means the harvesting of a crop that has been donated by the grower to a nonprofit organization which will

distribute the crop to individuals or other nonprofit organizations it considers appropriate recipients of the ~~food;~~ food.

(2) 'Market price' means the season average price of the crop as determined by the North Carolina Crop and Livestock Reporting Service in the Department of Agriculture, or the average price of the crop in the nearest local market for the month in which the crop is gleaned if the Crop and Livestock Reporting Service does not determine the season average price for that ~~crop; and~~ crop.

(3) 'Nonprofit organization' means an organization ~~for~~ to which charitable contributions are deductible from gross income under ~~G.S. 105-130.9 or G.S. 105-147(15) or (16).~~ the Code."

Sec. 1.20. G.S. 105-151.15 reads as rewritten:

"§ *105-151.15. Credit for distributing North Carolina wine.*

(a) Credit. A person who is required by Article 2C of this Chapter to pay the excise tax levied on unfortified or fortified wine is allowed as a credit against the tax imposed by this Division an amount equal to the product of twenty cents (20¢) and the number of liters of qualifying native wine on which the person paid excise tax during the taxable year. To obtain this credit a person who is a wine wholesaler or an importer must attach the following to the tax return on which the credit is claimed:

(1) A copy of the sales invoice between the manufacturer of the wine for which the credit is claimed and the grower from whom the fruits or berries of which the wine is composed was purchased;

(2) A statement signed by the manufacturer of the wine certifying that the wine for which the credit is claimed is qualifying native wine and giving the names of any other wine wholesalers or importers in North Carolina who received part of the same qualifying native wine.

If the person claiming the credit is an unfortified winery or a fortified winery, the person must attach to his return a signed statement certifying that the wine for which the credit is claimed is qualifying native wine. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except tax payments made by or on behalf of the taxpayer.

(b) Definitions. The following definitions apply in this section:

(1) Native Wine. Unfortified or fortified wine at least sixty percent (60%) of which is composed of fruits or berries grown in North Carolina.

(2) Qualifying Native Wine. Native wine that is part of the first 950 liters of wine produced by a manufacturer from a ton of fruits or berries grown in North Carolina."

Sec. 1.21. G.S. 105-151.16 is repealed.

Sec. 1.22. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding after G.S. 105-151.17 the following new sections to read:

"*§ 105-151.18. Credit for the disabled.*

A person who (i) is retired on disability, (ii) at the time of retirement, was permanently and totally disabled as defined in section 22 of the Code, and (iii) claims a federal income tax credit under section 22 of the Code for the taxable year, is allowed as a credit against the tax imposed by this Division an amount equal to one-third of the amount of the federal income tax credit for which he is eligible under section 22 of the Code. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

"*§ 105-151.19. Credit for North Carolina dividends.*

There is allowed as a credit against the tax imposed by this Division an amount equal to six percent (6%) of the amount of dividends received by the taxpayer during the taxable year from stock issued by a qualified corporation, up to a maximum credit of three hundred dollars ($300.00) per taxpayer for the taxable year. A corporation is a qualified corporation if fifty percent (50%) or more of the dividends from stock issued by the corporation would be deductible by a corporate shareholder for the taxable year under the provisions of G.S. 105-130.7(1), (2), (3), or (3a), except that no credit shall be allowed for dividends issued with respect to a taxable period during which the corporation is an S Corporation subject to the provisions of Division I-S of this Article.

This credit applies only with respect to dividends received while the taxpayer was a resident of this State. In the case of a married couple filing a joint return where both spouses received dividends during the taxable year, the three hundred dollar ($300.00) maximum applies separately to each spouse's dividends for a potential total credit of six hundred dollars ($600.00) for the couple. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer."

Sec. 1.23. G.S. 105-152 reads as rewritten:

"*§ 105-152. Returns.*

(a) The following persons shall file with the Secretary ~~of Revenue~~ an income tax return under affirmation, showing ~~therein~~ specifically

the ~~items of gross~~ taxable income and the ~~deductions allowed~~ adjustments required by this Division, and such other facts as the Secretary may require for the purpose of making any computation required by this Division:

(1) Every resident required to file an income tax return for the taxable year under the Code and every ~~or~~ nonresident who (i) derived gross income from North Carolina sources during the taxable year attributable to the ownership of any interest in real or tangible personal property in this State or derived from a business, trade, profession, or occupation carried on in this State and (ii) is required to file an income tax return for the taxable year under the Code. ~~has a gross income during the income year which is in excess of the personal exemption to which he or she is entitled under the provisions of G.S. 105-149(a), without the inclusion of the exemptions for dependents provided under subdivision (5), any part of which is subject to taxation in this State.~~

~~(2) Every resident or nonresident required under the provisions of G.S. 105-149(b) to prorate his exemption and who has a gross income during the income year from sources both within and without this State in excess of the prorated exemption, any part of which is subject to taxation in this State.~~

~~(3)~~(2) Every partnership doing business in this State as provided in G.S. 105-154.

~~(4)~~(3) Any person whom the Secretary believes to be liable for a tax under this Division, when so notified by the Secretary ~~of Revenue~~ and requested to file a return.

(b) If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of ~~such~~ the taxpayer.

(c) The return of an ~~individual, who, while living, receiving income in excess of the exemption during the income year,~~ individual who was required to file a return for the taxable year while living and who has died before making the return, shall be made in his name and behalf by the ~~administrator,~~ administrator or executor of the estate, and the tax shall be levied upon and collected from ~~his~~ the estate.

(d) When the Secretary ~~of Revenue~~ has reason to believe that any taxpayer so conducts ~~the~~ a trade or business as either directly or indirectly to distort ~~his true net~~ the taxpayer's taxable income ~~and the~~

~~net income properly attributable to the State,~~ or North Carolina taxable income whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, ~~he~~ the Secretary may require such facts as he deems necessary for the proper computation of the ~~entire net~~ taxable income and the North Carolina taxable income, ~~net income properly attributable to the State,~~ and in determining the same the Secretary ~~of Revenue~~ shall have regard to the fair profit ~~which~~ that would normally arise from the conduct of the trade or business.

(e) ~~A joint return may not be filed by a husband and wife; however, a husband and wife may, at their election, file their separate income tax returns on a single form, and a husband and wife so filing shall be deemed to have expressly agreed that:~~

~~(1) If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the Department of Revenue to the credit of the other spouse if the sum of the payments by such other spouse, including withholding and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable.~~

~~(2) If the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses or if either is deceased, to the survivor.~~

A joint return may be filed by a husband and wife as provided in G.S. 105-152.1. Except as otherwise provided in this Division, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Division. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Division reduced by the sum of all credits allowable under this Division including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6013 of the Code, that spouse is not liable for the corresponding tax imposed by this Division attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly shall be deemed to have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds

the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone.

(f) The Secretary may require some or all persons required to file a return under this section to attach to the return a copy of their federal income tax return for the taxable year. The Secretary may require a taxpayer to provide the Department with copies of any other return the taxpayer has filed with the Internal Revenue Service and to verify any information in the return."

Sec. 1.24. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding after G.S. 105-152 a new section to read:

"*§ 105-152.1. Joint returns.*

A husband and wife shall make a single return jointly if:

(1) Their federal taxable income is determined on a joint federal return; and

(2) Both spouses are residents of this State or both spouses have North Carolina taxable income."

Sec. 1.25. G.S. 105-154 reads as rewritten:

"*§ 105-154. Information at the source.*

(a) Every individual, partnership, corporation, joint-stock company or association, or insurance company, being a resident or having a place of business or having one or more employees, agents, or other representatives in this State, in whatever capacity acting, including lessors or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the State or of any political subdivision of the State and all officers and employees of the United States ~~of America~~ or of any political subdivision or agency thereof having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, dividends, premiums, annuities, compensations, remunerations, ~~emoluments~~ emoluments, or other fixed or determinable annual or periodical gains, profits, and incomes paid or payable during any year to any taxpayer, shall make complete return thereof to the Secretary ~~of Revenue~~ under such regulations and in such form and manner and to such extent as may be prescribed by ~~him.~~ the Secretary. The filing of any report in compliance with the provisions of this section by a foreign corporation shall not constitute an act in evidence of and shall not be deemed to be evidence that ~~such~~ the corporation is doing business in this State.

(b) Every partnership doing business in the State required to file a return under the Code shall make a ~~return,~~ return stating specifically the items of its gross income and the deductions allowed under the Code and the adjustments required by this Division, and shall include in the return the names and addresses of the individuals who would be

entitled to share in the net income if distributable, and the amount of the distributive share of each individual, together with the distributive shares of corporation dividends. The return shall be signed by one of the partners under affirmation in the form prescribed in G.S. 105-155 of this Division, and the same penalties prescribed in G.S. 105-236 shall apply in the event of a willful misstatement. If a business established in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State and the distributive share of the income of each nonresident owner or partner, and shall pay the tax as levied on individuals under G.S. 105-134.2 for each nonresident owner or partner. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the profits of the business in this State."

Sec. 1.26. G.S. 105-155 reads as rewritten:

"*§ 105-155. Time and place of filing returns.*

Returns shall be in such forms as the Secretary ~~of Revenue~~ may from time to time prescribe, and shall be filed with the Secretary at his main ~~office.~~ office or at any branch office. ~~office which he may establish.~~ The return of every ~~person~~ taxpayer reporting on a calendar year basis shall be filed on or before the fifteenth day of April in each year, and the return of every ~~person~~ taxpayer reporting on a fiscal year basis shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. In case of sickness, absence, or other disability or whenever in his judgment good cause exists, the Secretary may allow further time for filing returns.

There shall be annexed to the return the affirmation of the taxpayer making the return in the following form: 'Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. (If prepared by a person other than the taxpayer, ~~his~~ that the preparer's affirmation is based on all information of which ~~he~~ the preparer has any knowledge.)' The Secretary shall ~~cause to be prepared~~ prepare blank forms for the ~~said~~ returns, ~~and shall cause them to be distributed~~ distribute them throughout the State, and ~~to be furnished~~ furnish them upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of ~~making any~~ filing a return ~~herein required.~~ required by this Division."

Sec. 1.27. G.S. 105-156 reads as rewritten:

"*§ 105-156. Failure to file returns; supplementary returns.*

If the Secretary ~~of Revenue shall be~~ is of the opinion that any taxpayer has failed to file a return or to include in a return filed, either intentionally or through error, ~~items of~~ taxable income, ~~he~~ the Secretary may require from ~~such~~ the taxpayer a return or supplementary return, under oath, in such form as ~~he~~ the Secretary shall prescribe, of all the items of gross income ~~which~~ the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this Division. If from a supplementary return or otherwise the Secretary finds that any ~~items of income, taxable under this Division, have~~ taxable income has been omitted from the original return, ~~or any items returned as taxable that are not taxable, or any item as taxable income overstated,~~ he may require the ~~items~~ taxable income so omitted to be disclosed to him under oath of the taxpayer, and to be added to ~~or deducted from~~ the original return. ~~Such~~ The supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties ~~to which he may be liable~~ under G.S. 105-236. The Secretary may proceed under the provisions of G.S. ~~105-241.1,~~ 105-241.1 whether or not he requires a return or a supplementary return under this section."

Sec. 1.28. G.S. 105-156.1 is repealed.

Sec. 1.29. G.S. 105-157 reads as rewritten:

"*§ 105-157. Time and place of payment of tax.*

(a) Except as otherwise provided in this section and in Article 4A of this Chapter, the full amount of the tax payable as shown on the face of the return shall be paid to the Secretary ~~of Revenue~~ at the office where the return is filed at the time fixed by law for filing the return. ~~return; provided, that when a husband and wife have elected under G.S. 105-152(e) to file their separate income tax returns on a single form and the amount for which one spouse is separately liable has been reduced by credit for overpayment of tax by the other spouse as provided in that subsection, only the amount in excess of such credit shall be payable; provided, that if~~ If the amount shown to be due ~~after all credits~~ is less than one dollar ($1.00), no payment need be made.

(b) The tax may be paid with uncertified check during such time and under such regulations as the Secretary ~~of Revenue shall~~ may prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom ~~such~~ the check ~~is~~ was tendered shall remain liable for the payment of the tax and for all legal penalties the same as if ~~such~~ the check had not been tendered."

Sec. 1.30. G.S. 105-158 reads as rewritten:

"*§ 105-158. Abatement of income taxes of certain members of the armed forces upon death.*

In the case of any individual

(1) Who dies
   a. On or after January 1, ~~1964;~~ 1964,
   b. While in active service as a member of the armed forces of the United States, and
   c. While serving in a combat zone; ~~zone (as determined under G.S.105-141(b)(12);~~ or

(2) Who dies
   a. On or after January 1, ~~1964;~~ 1964, and
   b. As a result of wounds, ~~disease~~ disease, or injury incurred while in active service as a member of the armed forces of the United States, and while serving in a combat zone on or after January 1, 1964.

No individual income tax imposed by ~~the State of North Carolina~~ this Division shall apply with respect to the taxable year in which falls the date of ~~his~~ the individual's death, or with respect to any prior taxable year ending on or after the first day ~~he~~ the individual so served in a combat zone; and any tax under this Division and under the corresponding provisions of prior revenue laws for taxable years preceding those above specified which is unpaid at the date of ~~his~~ the individual's death (including interest, additions to the tax, and additional amounts) shall not be assessed and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment. As used in this section, the term 'combat zone' means an area which the President of the United States by executive order designates as an area in which the armed forces of the United States are or have been engaged in combat."

Sec. 1.31. G.S. 105-159 reads as rewritten:

"§ *105-159. Corrections and changes.*

If the amount of the ~~net~~ taxable income for any year of any taxpayer under this Division, as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined by the Commissioner of Internal Revenue or other officer of the United States of competent authority, ~~such~~ the taxpayer, within two years after receipt of the internal revenue agent's report or supplemental report reflecting the corrected or determined ~~net~~ taxable income shall make return under oath or affirmation to the Secretary ~~of Revenue~~ of ~~such~~ the corrected, ~~changed~~ changed, or determined ~~net~~ taxable income. In making ~~any~~ an assessment or refund under this section, the Secretary shall consider all ~~facts or~~ evidence brought to his attention, whether or not ~~the same were~~ it was considered ~~or taken into account~~ in the federal assessment or correction. If the taxpayer fails to notify the Secretary ~~of Revenue of assessment of additional tax by the Commissioner of Internal Revenue,~~ that the taxpayer's taxable income for any year as reported or as reportable to the United States

Treasury Department, is changed, corrected, or otherwise determined for federal income tax purposes, the statute of limitations shall not ~~apply.~~ apply to assessments under this section. The Secretary ~~of Revenue~~ shall ~~thereupon~~ proceed to ~~determine,~~ determine from such evidence as ~~he~~ may have been brought to his attention ~~or shall otherwise acquire,~~ the correct North Carolina taxable ~~net~~ income of ~~such~~ the taxpayer for the ~~fiscal or calendar~~ taxable year, and if there ~~shall be~~ is any additional tax due from ~~such~~ the taxpayer ~~the same~~ it shall be assessed and collected; and if there ~~shall have~~ has been an overpayment of the tax the ~~said~~ Secretary shall, within 30 days after the final determination of the North Carolina taxable ~~net~~ income of ~~such~~ the taxpayer, refund the amount of ~~such~~ the excess: Provided, that any taxpayer who fails to comply with this section ~~as to making report of such change as made by the federal government~~ within the time specified shall be subject to all penalties as provided in G.S. 105-236, in case of additional tax due, and shall forfeit ~~his rights~~ the right to any refund due by reason of ~~such~~ the change.

When the taxpayer makes the return reflecting the corrected ~~net~~ taxable income as required by this section, the Secretary ~~of Revenue~~ shall make assessments or refunds based thereon within three years ~~from~~ after the date the return required by this section is filed and not thereafter. When the taxpayer does not make the return reflecting the corrected ~~net~~ taxable income as required by this section but the Department ~~of Revenue~~ receives from the United States government or one of its agents a report reflecting ~~such~~ corrected ~~net~~ taxable income, the Secretary ~~of Revenue~~ shall make assessments for taxes due based on ~~such~~ the corrected ~~net~~ taxable income within five years ~~from~~ after the date the report from the United States government or its agent is actually received and not thereafter.

Nothing in this section ~~shall be construed as preventing~~ prevents the Secretary ~~of Revenue~~ from making an assessment immediately following the receipt from any source of information concerning the correction, change in, or determination of ~~net~~ taxable income of a taxpayer by the United States government. The assessment of tax or additional tax under this section shall not be subject to any statute of limitations except as provided in this section."

Sec. 1.32. G.S. 105-159.1 reads as rewritten:

"*§ 105-159.1. Designation of tax by individual to political party.*

(a) Every individual whose income tax liability for the taxable year is one dollar ($1.00) or more may designate on his or her income tax return that one dollar ($1.00) of the amount of tax paid by him or her to the Department ~~of Revenue~~ shall ~~thereafter~~ be paid by the Secretary ~~of Revenue, in the manner hereinafter described,~~ to the State Treasurer for the use of all political parties ~~as defined herein~~ upon a

pro rata basis according to their respective party voter registrations according to the most recent certification of the State Board of Elections; Provided, however, that no political party with less than one percent (1%) of the total number of registered voters in the State shall receive any ~~such~~ of these funds, and the registration of such ~~parties~~ a party shall not be included in calculating the pro rata distribution. ~~For purposes of~~ As used in this section, ~~political party~~ the term 'political party' ~~shall mean~~ means a political party which at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for ~~Governor,~~ Governor or for presidential electors, or a group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General ~~Statutes of North Carolina.~~ Statutes.

(b) For each quarterly period beginning on or after January 1, 1978, ~~and for each quarterly period thereafter,~~ on or before the last day of the month following the close of ~~each~~ the quarterly period, the Secretary ~~of Revenue~~ shall remit all funds ~~so~~ designated ~~above~~ pursuant to this section collected during the preceding quarter to the State Treasurer who shall ~~thereafter~~ deposit them in an interest-bearing account to be known as the North Carolina Political Parties Financing Fund. Any interest earned on funds so deposited shall be credited to the political party ~~for~~ to which ~~said~~ the funds were ~~designated.~~ allocated. A report to the State Treasurer, State Board of ~~Elections~~ Elections, and each State party chairman shall accompany each ~~such~~ remittance, and shall detail the amount of funds forwarded, the cumulative total of funds forwarded to date for the year, and an estimate of the probable total amount to be collected and forwarded for that calendar year.

(d) The Secretary ~~of Revenue~~ shall amend the income tax return in order that all taxpayers desiring to make the political contributions authorized ~~herein shall~~ in this section may do so by designating ~~same~~ on the front face of the tax return. The line of authorization for ~~such~~ the designation shall be color contrasted with the color scheme of the remainder of the income tax return. ~~Such return.~~ The return or its accompanying explanatory ~~instruction.~~ instruction shall readily indicate that any ~~such~~ designations neither increase nor decrease an individual's tax liability."

B. S Corporation Income Tax Act Amendments.

Sec. 1.33. Section 6 of Chapter 1089 of the 1987 Session Laws reads as rewritten:

"Sec. 6. This act is effective for taxable years beginning on or after ~~July 1, 1990.~~ January 1, 1989."

Sec. 1.34. Sections 3 and 4 of Chapter 1089 of the 1987 Session Laws are repealed.

Sec. 1.35. Division I-S of Article 4 of Chapter 105 of the General Statutes reads as rewritten:

"DIVISION I-S. S CORPORATION INCOME TAX.

"§ *105-131. Title; definitions; interpretation.*

(a) This Division of the income tax Article shall be known and may be cited as the S Corporation Income Tax Act.

(b) For the purpose of this Division, unless otherwise required by the context:

~~(1)~~ ~~'Business income' means items of income, loss, deduction or credit arising from transactions and activity in the regular course of the S Corporation's trade or business, and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the S Corporation's regular trade or business operations.~~

(1)~~(2)~~ 'Code' means the Internal Revenue Code of 1986, as enacted as of January 1, ~~1988~~, 1989, and includes any provisions enacted as of that date which become effective either before or after that date.

(2)~~(3)~~ 'C Corporation' means a corporation that is not an S Corporation and is subject to the tax levied under Division I of this Article.

(3)~~(4)~~ 'Department' means the Department of Revenue.

(4) 'Income attributable to the State' means items of income, loss, deduction, or credit of the S Corporation apportioned and allocated to this State pursuant to G.S. 105-130.4.

~~(5)~~ ~~'Net income' or 'net loss' shall be the same as the S Corporation's taxable income, as defined in the Code.~~

(5) 'Income not attributable to the State' means all items of income, loss, deduction, or credit of the S Corporation other than income attributable to the State.

~~(6)~~ ~~'Nonbusiness income' means all items of income, loss, deduction, or credit of the S Corporation other than business income.~~

(6)~~(7)~~ 'Post-termination transition period' means that period defined in section 1377(b)(1) of the Code.

(7)~~(8)~~ 'Pro rata share' means the share determined with respect to an S Corporation shareholder for a taxable

period in the manner provided in section 1377(a) of the Code.

(8)~~(9)~~ 'S Corporation' means a corporation for which a valid election under section 1362(a) of the Code is in effect.

(9)~~(10)~~ 'Secretary' means the Secretary of Revenue.

(10)~~(11)~~ 'Taxable period' means any taxable year or portion of a taxable year during which a corporation is an S Corporation.

(c) Except as otherwise expressly provided or clearly appearing from the context, any term used in this Division shall have the same meaning as when used in a comparable context in the Code, or in any statute relating to federal income taxes, in effect during the taxable period. Due consideration shall be given in the interpretation of this Division to applicable sections of the Code in effect and to federal rulings and regulations interpreting ~~such~~ those sections, except where the Code, ruling, or regulation conflicts with the provisions of this Division.

"§ *105-131.1. Taxation of an S Corporation and its shareholders.*

(a) An S Corporation shall not be subject to the tax levied under G.S. 105-130.3.

(b) Each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, ~~net income or net loss, to the extent apportioned and allocated to this State pursuant to G.S. 105-130.4,~~ shall be taken into account by the shareholder in the manner and subject to the adjustments provided in ~~G.S. 105-131.2~~ Division II of this Article and section 1366 of the Code and shall be subject to the tax levied under Division II of this Article.

"§ *105-131.2. ~~Apportionment, allocation, adjustment.~~ Adjustment and characterization of income.*

~~(a) Allocation of Net Income. The net income of an S Corporation shall be allocated and apportioned to this State as provided in G.S. 105-130.4.~~

(a) Adjustment. The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be subject to the adjustments provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be subject to the adjustments provided in G.S. 105-134.6(b) and (c).

~~(b) Allocation of Shareholder's Pro Rata Share.~~

~~(1) The pro rata share of each resident and nonresident shareholder in the business income of the S Corporation apportioned to this State under subsection (a) of this section shall, for purposes of G.S. 105-131.1(b), be taken into~~

~~account by the shareholder subject to the adjustments in determining State net income as provided in G.S. 105-130.5.~~

~~(2) The pro rata share of each resident shareholder in (i) the business income of the S Corporation not apportioned to this State under subsection (a) above, and (ii) the entire nonbusiness income of the S Corporation, shall, for purposes of G.S. 105-131.1(b), be taken into account by the shareholder subject to the adjustments in determining State net income for items exempt from taxation in the State under G.S. 105-141(b).~~

~~(3) The pro rata share of each nonresident shareholder in the nonbusiness income of the S Corporation allocated to this State under subsection (a) above, shall, for purposes of G.S. 105-131.1(b), be taken into account by the shareholder subject to the adjustments in determining State net income as provided in G.S. 105-130.5.~~

(c) Characterization of Income. S Corporation items of income, loss, deduction, and credit taken into account by a shareholder pursuant to G.S. 105-131.1(b) shall be characterized ~~for purposes of this Division~~ as though received or incurred by the S Corporation and not its shareholder.

"*§ 105-131.3. Basis and adjustments.*

(a) The initial basis of a resident shareholder in the stock of an S Corporation and in any indebtedness of the corporation owed to that shareholder shall be determined, as of the later of the date the stock is acquired, the effective date of the S Corporation election, or the date the shareholder became a resident of this State, as provided under the Code.

(b) The basis of a resident shareholder in the stock and indebtedness of an S Corporation shall be adjusted in the manner and to the extent required by section 1011 of the Code except that:

(1) Any adjustments made (other than for income exempt from federal or State income taxes) ~~to the S Corporation's business income and nonbusiness income~~ pursuant to G.S. 105-131.2 shall be taken into account; and

(2) Any adjustments made pursuant to section 1367 of the Code for a taxable period during which this State did not measure S Corporation shareholder income by reference to the corporation's income shall be disregarded.

(c) The initial basis of a nonresident shareholder in the stock of an S Corporation and in any indebtedness of the corporation to that shareholder shall be zero.

(d) The basis of a nonresident shareholder in the stock and indebtedness of an S Corporation shall be adjusted as provided in section 1367 of the Code, except that adjustments to basis shall be limited to the ~~business income and nonbusiness~~ income taken into account by the shareholder pursuant to G.S. 105-131.1(b).

(e) The basis of a shareholder in the stock of an S Corporation shall be reduced by the amount allowed as a loss or deduction pursuant to G.S. 105-131.4(c).

(f) The basis of a resident shareholder in the stock of an S Corporation shall be reduced by the amount of any cash distribution that is not taxable to the shareholder as a result of the application of G.S. 105-131.6(b).

(g) For purposes of this section, a shareholder shall be considered to have acquired stock or indebtedness received by gift at the time the donor acquired the stock or indebtedness, if the donor was a resident of this State at the time of the gift.

"§ *105-131.4. Carryforwards; carrybacks; loss limitation.*

(a) Carryforwards and carrybacks to and from an S Corporation shall be restricted in the manner provided in section 1371(b) of the Code.

(b) The aggregate amount of losses or deductions of an S Corporation taken into account by a shareholder pursuant to G.S. 105-131.1(b) may not exceed the combined adjusted bases, determined in accordance with G.S. 105-131.3, of the shareholder in the stock and indebtedness of the S Corporation.

(c) Any loss or deduction that is disallowed for a taxable period pursuant to subsection (b) of this section shall be treated as incurred by the corporation in the succeeding taxable period with respect to that shareholder.

(d)(1) Any loss or deduction that is disallowed pursuant to subsection (b) of this section for the corporation's last taxable period as an S Corporation shall be treated as incurred by the shareholder on the last day of any post-termination transition period.

(2) The aggregate amount of losses and deductions taken into account by a shareholder pursuant to subdivision (1) of this subsection may not exceed the adjusted basis of the shareholder in the stock of the corporation (determined in accordance with G.S. 105-131.3 at the close of the last day of any post-termination transition period and without regard to this subsection).

"§ *105-131.5. Part-year resident shareholder.*

If a shareholder of an S Corporation is both a resident and nonresident of this State during any taxable period, the shareholder's

pro rata share of the S Corporation's income attributable to the State and income not attributable to the State for the taxable period ~~business income and nonbusiness income determined pursuant to G.S. 105-131.2~~ shall be further prorated between the shareholder's periods of residence and nonresidence, in accordance with the number of days in each ~~period.~~ period, as provided in G.S. 105-134.5.

"§ *105-131.6. Distributions.*

(a) Subject to the provisions of subsection (c) of this section, a distribution made by an S Corporation with respect to its stock to a resident shareholder shall be taxable to the shareholder ~~under~~ as provided in Division II of this Article ~~only~~ to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Code.

(b) Subject to the provisions of subsection (c) of this section, any distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period shall not be taxable to the shareholder ~~under~~ as provided in Division II of this Article to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with section 1371(e) of the Code.

(c) In applying sections 1368 and 1371(e) of the Code to any distribution referred to in this section:

(1) The term 'adjusted basis of the stock' means the adjusted basis of the shareholder's stock as determined under G.S. 105-131.3; and

(2) The accumulated adjustments account maintained for each resident shareholder shall be equal to, and shall be adjusted in the same manner as, the corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the Code, except that:

a. The accumulated adjustments account shall be modified in the manner provided in G.S. 105-131.3(b)(1); and

b. The amount of the corporation's federal accumulated adjustments account that existed on the day this State began to measure the S Corporation shareholders' income by reference to the income of the S Corporation shall be ignored and shall be treated for purposes of Divisions I and II of this Article as additional accumulated earnings and profits of the corporation.

"§ *105-131.7. Returns; shareholder agreements; mandatory withholding.*

(a) An S Corporation incorporated or doing business in the State shall file with the Department an annual return, on a form prescribed by the Secretary, on or before the due date prescribed for the filing of C Corporation returns in G.S. 105-130.17. The return shall show the

name, address, and social security or federal identification number of each shareholder, income attributable to the State and the income not attributable ~~the allocations and apportionments of income to this~~ to the State with respect to each shareholder as ~~determined under G.S. 105-131.2,~~ defined in G.S. 105-131(4) and (5), and such other information as the Secretary may require.

(b) The Department shall permit S Corporations to file composite returns and to make composite payments of tax on behalf of some or all nonresident shareholders. The Department may permit S Corporations to file composite returns and make composite payments of tax on behalf of some or all resident shareholders.

(c) An S Corporation shall file with the Department, on a form prescribed by the Secretary, the agreement of each nonresident shareholder of the corporation (i) to file a return and make timely payment of all taxes imposed by this State on the shareholder with respect to the income of the S Corporation, and (ii) to be subject to personal jurisdiction in this State for purposes of the collection of any unpaid income tax, together with related interest and penalties, owed by the nonresident shareholder. If the corporation fails to timely file an agreement required by this subsection on behalf of any of its nonresident shareholders, then the corporation shall at the time specified in subsection (d) of this section pay to the Department on behalf of each nonresident shareholder with respect to whom an agreement has not been timely filed ~~who fails to execute such an agreement~~ an amount equal to seven percent (7%) of the shareholder's pro rata share of the S Corporation's ~~net~~ income attributable to the State reflected on the corporation's return for the taxable period. An S Corporation may recover a payment made pursuant to the preceding sentence from the shareholder on whose behalf the payment was made. ~~apportioned and allocated to this State pursuant to G.S. 105-130.4 and adjusted pursuant to G.S. 105-131.2.~~

(d) The agreements required to be filed pursuant to subsection (c) of this section shall be filed at the following times:

(1) At the time the annual return is required to be filed for the first taxable period for which the S Corporation becomes subject to the provisions of this Division; and

(2) At the time the annual return is required to be filed for any taxable period in which the corporation has a nonresident shareholder on whose behalf such an agreement has not been previously filed.

(e) Amounts paid to the Department on account of the corporation's shareholders under subsections (b) and (c) shall constitute payments on their behalf of the income tax imposed on them under Division II of this Article for the taxable period.

"§ *105-131.8. Tax credits.*

(a) For purposes of G.S. 105-151, each resident shareholder shall be considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state which does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term 'net income tax' means any tax imposed on or measured by a corporation's net income.

(b) Each shareholder of an S Corporation shall be allowed as a credit against the tax imposed by Division II of this Article in an amount equal to the shareholder's pro rata share of the tax credits ~~described in G.S. 105-130.22 through G.S. 105-130.39~~ for which the S Corporation is eligible."

C. Income Tax Act for Estates and Trusts Amendments.

Sec. 1.36. G.S. 105-160 reads as rewritten:

"§ *105-160. Short title.*

This Division shall be known ~~and may be cited~~ as the Income Tax Act for Estates and Trusts."

Sec. 1.37. G.S. 105-161, 105-162, and 105-163 are repealed.

Sec. 1.38. Division III of Article 4 of Chapter 105 of the General Statutes is amended by adding after G.S. 105-160 the following new sections to read:

"§ *105-160.1. Definitions.*

The definitions provided in Division II of this Article shall apply in this Division except where the context clearly indicates a different meaning.

"§ *105-160.2. Imposition of tax.*

The tax imposed by this Division shall apply to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Division. The taxable income of an estate or trust shall be the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, except that the adjustments provided in G.S. 105-134.6 and G.S. 105-134.7 shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax shall be computed at the following percentages of an amount equal to the taxable income multiplied by a fraction, the numerator of which is the estate or trust's gross income from North Carolina sources, plus the gross income from sources outside of the State and from intangible sources which is for the benefit of a resident of this State, and the denominator of which is the estate or trust's gross income as calculated under the Code. For purposes of the preceding sentence, taxable income and

gross income shall be computed subject to the adjustments provided in G.S. 105-134.6 and G.S. 105-134.7. The tax shall be at six percent (6%) on the first twelve thousand seven hundred fifty dollars ($12,750) of the amount computed above; and at seven percent (7%) of the excess of the amount computed above over twelve thousand seven hundred fifty dollars ($12,750). The tax computed under the provisions of this Division shall be paid by the fiduciary responsible for administering the estate or trust.

"*§ 105-160.3. Tax credits.*

(a) Except as otherwise provided in this section, the credits allowed to an individual against the tax imposed by Division II of this Article shall be allowed to the same extent to an estate or a trust against the tax imposed by this Division. Any credit computed as a percentage of income received shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. No credit may exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the estate or trust.

(b) The following credits are not allowed to an estate or trust:

(1) G.S. 105-151. Tax credits for income taxes paid to other states by individuals.

(2) G.S. 105-151.11. Credit for child care and certain employment-related expenses.

(3) G.S. 105-151.18. Credit for the disabled.

"*§ 105-160.4. Tax credits for income taxes paid to other states by estates and trusts.*

(a) If a fiduciary is required to pay income tax to this State for an estate or a trust, the fiduciary shall be allowed a credit against the tax imposed by this Division for income taxes imposed by and paid to another state or country on income derived from sources within that other state or country in accordance with the formula contained in subsection (b) and the requirements of subsection (c).

(b) The fraction of the gross income for North Carolina income tax purposes that is derived from sources within and subject to income tax in another state or country shall be ascertained and the North Carolina income tax before credit under this section shall be multiplied by that fraction. The credit allowed shall be either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(c) Receipts showing the payment of income taxes to another state or country and a true copy of the return upon the basis of which the taxes are assessed shall be filed with the Secretary at or before the time credit is claimed. If credit is claimed on account of a deficiency

assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed with the Secretary.

(d) If any taxes paid to another state or country for which a fiduciary has been allowed a credit under this section are at any time credited or refunded to the fiduciary, a tax equal to that portion of the credit allowed for the taxes so credited or refunded shall be due and payable from the fiduciary and shall be subject to the penalties and interest on delinquent payments provided in G.S. 105-236 and G.S. 105-241.1.

(e) A resident beneficiary of an estate or trust who is taxed under the provisions of Division II of this Article on income from an estate or trust determined to be includable in the resident's gross income is allowed a credit against the tax imposed for income taxes paid by the fiduciary to another state or country on the income in accordance with the formula contained in subsection (b) of this section and the requirements of subsection (c) of this section: provided, that if any taxes paid to another state or country for which a beneficiary has been allowed credit under this section are at any time credited or refunded to the beneficiary, a tax equal to that portion of the credit allowed for the taxes so credited or refunded shall be due and payable from the beneficiary and shall be subject to the penalties and interest on delinquent payments provided in G.S. 105-236 and G.S. 105-241.1.

"*§ 105-160.5. Returns.*

The fiduciary of an estate or trust described below shall file an income tax return under affirmation, showing specifically the taxable income and the adjustments required by this Division and such other facts as the Secretary may require for the purpose of making any computation required by this Division:

(1) Every estate or trust which has taxable income under this Division during the taxable year and is required to file an income tax return for the taxable year under the Code.

(2) Every estate or trust which the Secretary believes to be liable for a tax under this Division, when so notified by the Secretary and requested to file a return.

"*§ 105-160.6. Time and place of filing returns.*

Returns required under the provisions of G.S. 105-160.5 shall be in such form as the Secretary may prescribe, and shall be filed with the Secretary at the Secretary's main office or at any branch office which the Secretary may establish. The return of every fiduciary reporting on a calendar-year basis shall be filed on or before the 15th day of April in each year, and the return of every fiduciary reporting on a fiscal year basis shall be filed on or before the 15th day of the fourth month following the close of the fiscal year. In the case of

sickness, absence, or other disability or whenever in his judgment good cause exists, the Secretary may allow further time for filing a return.

"*§ 105-160.7. Time and place of payment of tax.*

(a) The full amount of the tax payable as shown on the face of the return shall be paid to the Secretary at the office where the return is filed at the time fixed by law for filing the return. However, if the amount shown to be due after all credits is less than one dollar ($1.00), no payment need be made.

(b) The tax may be paid with uncertified check, but if a check so received is not paid by the financial institution on which it is drawn, the fiduciary by whom the check was tendered shall remain liable for the payment of the tax and for all penalties lawfully imposed.

"*§ 105-160.8. Corrections and changes.*

For purposes of this Division, the provisions of G.S. 105-159 requiring an individual to report changes, corrections, or the determination of net income by the Internal Revenue Service shall apply to fiduciaries required to file returns for estates and trusts."

D. Chapter 105 Conforming Amendments.

Sec. 1.39. G.S. 105-163.02(11) reads as rewritten:

"(11) 'Taxable year' shall have the meaning ~~ascribed to such term~~ provided in G.S. ~~105-135(9)~~ 105-134.1 and G.S. 105-130.2(5), as appropriate. In addition, 'taxable year' shall be that taxable year for which a manufacturer files an income tax return upon which the tax credit provided for under this Division is claimed."

Sec. 1.40. G.S. 105-163.1(3) reads as rewritten:

"(3) 'Dependent' means a dependent with respect to whom an income tax exemption is allowed under the ~~provisions of G.S. 105-149(a)(5)~~ Code."

Sec. 1.41. G.S. 105-163.2(a) and (b) read as rewritten:

"(a) Every employer making payment of wages on or after January 1, 1960, shall deduct and withhold with respect to the wages of each employee for each payroll period an amount determined as follows:

~~Such~~ An amount which, if an equal amount was collected for each similar payroll period with respect to a similar amount of wages for each payroll period during an entire calendar year, would aggregate or approximate the income tax liability of ~~such~~ the employee under Article 4 of this Chapter after making allowance for the personal exemptions to which ~~such~~ the employee would be entitled on the basis of his status during ~~such~~ the payroll period and after making allowance for withholding purposes for a deduction from wages of the amount of the standard deduction allowed under ~~G.S. 105-147(22)~~ the Code less the amount by which the standard deduction has been

increased under section 63(c)(4) of the Code and without making allowance for any other deductions.

(b) The Secretary ~~of Revenue~~ shall cause to be prepared and shall promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of exemptions to which an employee may be entitled and taking into account the ~~limited ten percent (10%) deduction above referred to.~~ appropriate standard deduction. ~~Such~~ The tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability ~~with respect to said~~ for that year. The withholding of wages pursuant to and in accordance with ~~such~~ these tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article."

Sec. 1.42. G.S. 105-163.3 reads as rewritten:

"*§ 105-163.3. Withholding in accordance with regulations.*

The manner of withholding and the amount to be deducted and withheld under G.S. 105-163.2 shall be determined in accordance with tables, ~~rules~~ rules, and regulations promulgated by the Secretary. The withholding exemption allowed by ~~such~~ these tables, ~~rules~~ rules, and regulations shall, as nearly as possible, approximate the exemptions to which an employee would be entitled under ~~G.S. 105-149,~~ the Code less the amount by which the exemptions would be increased under section 151(d)(3) of the Code."

Sec. 1.43. G.S. 105-163.5(b) reads as rewritten:

"(b) Every employee shall, on or before January 1, 1960, or at the time of commencing employment, whichever is later, furnish his employer with a signed withholding exemption certificate informing the employer of the exemptions ~~which~~ the employee claims, which in no event shall exceed the amount of exemptions to which the employee is entitled under ~~G.S. 105-149;~~ the Code; but, in the event that the employee fails to file the exemption ~~certificate required herein,~~ certificate the employer, in computing amounts to be withheld from ~~said~~ the employee's wages, shall allow the employee the exemption accorded a single person with no dependents."

Sec. 1.44. G.S. 105-163.10 reads as rewritten:

"*§ 105-163.10. Withheld amounts credited to individual for calendar year.*

The amount deducted and withheld under G.S. 105-163.2 during any calendar year from the wages of any individual shall be allowed as a credit to ~~such~~ that individual against the tax imposed by G.S. ~~105-136.~~ 105-134.2 for taxable years beginning in ~~such~~ that calendar

year. If more than one taxable year begins in ~~such~~ that calendar year ~~such~~ the amount shall be allowed as a credit against the tax for the last taxable year so beginning. As a prerequisite to obtaining the credit allowed ~~herein.~~ in this section, the individual taxpayer must file with the Secretary one copy, and such other copies and information as may be required by regulation, of the withholding statement provided for by G.S. 105-163.7, and ~~such~~ the withholding statement must accompany the annual income tax return required by G.S. 105-152."

Sec. 1.45. G.S. 105-163.16(d), (e), and (f) read as rewritten:

"(d) When a husband and wife have elected under ~~G.S. 105-152(e)~~ G.S. 105-152.1 to file ~~their separate income tax returns on a single form~~ a joint return and a refund for overpayment of tax is made payable to both spouses as provided in that subsection, the provisions of this section shall apply to ~~such~~ the refund.

(e) Any taxpayer who ~~shall be~~ is entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of ~~such~~ the refund to the Wildlife Fund for the support of wildlife management and protection programs primarily for nongame wildlife species and wildlife species which are or may hereafter be designated as endangered or threatened. The Secretary shall provide appropriate language and space on the individual income tax form in which to make ~~such election~~ the election. ~~and shall note the same in his instructions as a contribution qualifying as a deduction under G.S. 105-147(16). Any such~~ The election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. All of ~~such~~ the contributions made pursuant to this subsection shall be transmitted to the State Treasurer for credit to the Wildlife Fund which shall be made available to the Wildlife Resources Commission for the support of management and protection programs primarily for nongame wildlife and endangered and threatened species and to match federal funds which may become available for ~~such~~ these purposes.

(f) Any taxpayer who ~~shall be~~ is entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of ~~such~~ the refund to the North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes. The Secretary shall provide appropriate language and space on the individual income tax form in which to make ~~such election~~ the election. ~~and shall note the same in his instructions as a contribution qualifying as a deduction under G.S. 105-147(16). Any such~~ The election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall, on a quarterly basis, transmit the ~~remainder of such~~ the contributions made pursuant to this

subsection to the State Treasurer for deposit in the North Carolina Candidates Financing Fund. Any interest earned on funds so deposited shall be credited to that Fund."

Sec. 1.46. G.S. 105-203 reads as rewritten:

"*§ 105-203. Shares of stock.*

All shares of stock (including shares and units of ownership of mutual funds, investment ~~trusts~~ trusts, and investment funds) owned by residents of this State or having a business, ~~commercial~~ commercial, or taxable situs in this State on December 31 of each year, with the exception herein provided, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25¢) on every one hundred dollars ($100.00) of the total fair market value of ~~such~~ the stock on December 31 of each year less ~~such~~ the proportion of ~~such~~ the value ~~as~~ that is equal ~~to the proportion of the dividends upon such stock deductible by such taxpayer in computing his income tax liability under the provisions of G.S. 105-130.7 and 105-147(7) without regard to the fifteen-thousand- dollar ($15,000) limitation under subdivision (7) of G.S. 105-147 and 105-130.7.~~ to:

(1) In the case of a taxpayer that is a corporation, the proportion of the dividends upon the stock deductible by the taxpayer in computing its income tax liability under G.S. 105-130.7 without regard to the fifteen thousand dollar ($15,000) limitation under G.S. 105-130.7; and

(2) In the case of a taxpayer that is not a corporation, the proportion of the dividends upon the stock that would be deductible by the taxpayer, if the taxpayer were a corporation, in computing its income tax liability under the provisions of G.S. 105-130.7(1),(2),(3), and (3a), without regard to the fifteen thousand dollar ($15,000) limitation under G.S. 105-130.7.

The tax herein levied shall not apply to shares of stock in building and loan associations or savings and loan associations which pay a tax as levied under Article 8D of Chapter 105 of the General Statutes, nor to shares of stock owned by any corporation which has its commercial domicile in North Carolina, where ~~such~~ the corporation owns more than fifty percent (50%) of the outstanding voting stock.

The tax herein levied shall not apply to units of ownership in an investment trust, the corpus of which is composed (i) entirely of obligations of this State or (ii) entirely of obligations of the United States and of this State, at least eighty percent (80%) of the fair market value of which represents obligations of this State. For the purpose of this paragraph, 'State' includes the State of North Carolina, political subdivisions of this State, and agencies of such governmental units; 'United States' includes the United States and its

possessions, and the District of Columbia; 'obligations' includes bonds, notes and other evidences of debt. In order for the exemption provided for in this paragraph to apply, it shall be the duty of the trustees of an investment trust to provide to the Secretary of Revenue, in form satisfactory to him and not later than December 31 of the year with respect to which the exemption applies, information sufficient to establish the applicability of this exemption.

Indebtedness incurred directly for the purchase of shares of stock may be deducted from the total value of ~~such~~ those shares; provided, the specific shares of stock so purchased are pledged as collateral to secure ~~said~~ the indebtedness; provided further, that only so much of ~~said~~ the indebtedness may be deducted as is in the same proportion as the taxable value of ~~said~~ the shares of stock is to the total value of ~~said~~ the shares of stock."

Sec. 1.47. G.S. 105-259 reads as rewritten:

"*§ 105-259. Secrecy required of officials; penalty for violation.*

With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii) members and former members of the Property Tax Commission; (iv) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (v) the Commissioner of Insurance and all other officers or employees and former officers and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of ~~said~~ these persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be determined, deduced or estimated, whether ~~the same be~~ it is set forth or disclosed in or by means of any report or return required to be filed or furnished under this Subchapter, or in or by means of any audit, assessment, application, correspondence, schedule or other document relating to ~~such~~ the taxpayer, notwithstanding the provisions of Chapter 132 of the General Statutes or of any other law or laws relating to public records. It shall likewise be unlawful to reveal whether or not any taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or corporation not otherwise entitled to information relating to the amount of income, income tax or other taxes of a taxpayer, any list of names, addresses, social security

numbers or other personal information concerning ~~such~~ the taxpayer, whether or not ~~such~~ the list discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that when an election is made by a husband and wife ~~under G.S. 105-152(e) to file their separate returns on a single form, or in order to determine an exemption allowable under G.S. 105-149(a)(2)~~ under G.S. 105-152.1 to file a joint return, any information given to one spouse concerning the income or income tax of the other spouse reported or reportable on ~~such single~~ the joint return ~~or on separate returns~~ shall not be a violation of the provisions of this section.

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of ~~such~~ these reports or returns by the Governor, Attorney General, or their duly authorized representative; or the inspection by a legal representative of the State of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this Subchapter; nor shall the provisions of this section prohibit the Department of Revenue furnishing information to other governmental agencies of persons and firms properly licensed under Schedule B, G.S. 105-33 to 105-113. The Department of Revenue may exchange information with the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to 105-113, with respect to parties liable for ~~such~~ these taxes and as to parties who have paid ~~such~~ these license taxes.

When any record of the Department of Revenue ~~shall have~~ has been photographed, ~~photocopied~~ photocopied, or microphotocopied pursuant to the authority contained in G.S. 8-45.3, the original of ~~said~~ that record may thereafter be destroyed at any time upon the order of the Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, ~~G.S. 132-3~~ G.S. 132-2, or any other law ~~or laws~~ relating to the preservation of public records. Any record ~~which shall not have~~ that has not been so photographed, ~~photocopied~~ photocopied, or microphotocopied shall be preserved for three years, and thereafter until the Secretary of Revenue ~~shall order the same to be~~ orders it destroyed.

Any person, officer, agent, clerk, employee, or local tax official or ~~former officer, employee or~~ any former officer, employee, or local tax official ~~violating~~ who violates the provisions of this section shall be guilty of a misdemeanor and fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000) and/or imprisoned, in the discretion of the court; and if ~~such offending person be~~ the person committing the violation is a public officer or

employee, ~~he~~ that person shall be dismissed from such office or employment, and ~~shall~~ may not hold any public office or employment in this State for a period of five years thereafter.

Notwithstanding the provisions of this section, the Secretary of Revenue may permit the Commissioner of Internal Revenue of the United States, or the revenue officer of any other state imposing any of the taxes imposed in this Subchapter, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish ~~such officer or his authorized agent~~ that person an abstract of the report or return of any taxpayer; or supply ~~such officer~~ that person with information concerning any item contained in any report or return, or disclosed by the report of any investigation of ~~such~~ any report or return of any taxpayer. ~~Such~~ The permission, however, ~~shall~~ may be granted or ~~such~~ the information furnished to ~~such officer, or his duly authorized representatives,~~ the officer or agent only if the statutes of the United States or of ~~such~~ the other state ~~grants~~ grant substantially similar privilege to the Secretary of Revenue of this State or ~~his~~ the Secretary's duly authorized representative. Notwithstanding any other provision of law, the Secretary may also furnish names, addresses, and account and identification numbers of ~~(a)~~ (i) taxpayers who may be entitled to property held in the Escheat Fund to the Department of State Treasurer when that Department requests the information for the purpose of administering Chapter 116B of the General Statutes, and ~~(b)~~ (ii) taxpayers to the Employment Security Commission when that Commission requests the information for the purpose of administering Article 2 of Chapter 96 of the General Statutes. Neither this section nor any other law prevents the exchange of information between the Department of Revenue and the Department of Transportation's Division of Motor Vehicles when the information is needed by either to administer the laws with which they are charged. Notwithstanding any other provision of law, State officers and employees who perform computerized data processing functions pursuant to G.S. 143-341(9) for the Department of Revenue are authorized to receive and process for the Department of Revenue information in reports and returns and are subject to the criminal provisions of this section.

Notwithstanding the provisions of this section, the Secretary of Revenue may contract with any person, firm or corporation to receive and address, sort, bag, or deliver to the United States Postal Service any bulk mailing originated by the Department of Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure performance of the contract, the contractor shall furnish a bond in a form and amount acceptable to the Secretary."

Sec. 1.48. G.S. 105-266 reads as rewritten:

"*§ 105-266. Overpayment of taxes to be refunded with interest.*

If the Secretary of Revenue discovers from the examination of any return, or otherwise, that any taxpayer has overpaid the correct amount of tax (including penalties, interest and costs if any), ~~such~~ that overpayment if the amount of three dollars ($3.00) or more, shall be refunded to the taxpayer within 60 days after it is ascertained together with interest ~~thereon~~ at the rate established in G.S. 105-241.1(i) for assessments; provided, that interest on ~~any such~~ the refund shall be computed from a date 90 days after the date the tax was originally paid by the taxpayer; except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Set-off Debt Collection Act. If ~~said~~ the overpayment is less than three dollars ($3.00) ~~said~~ the overpayment shall be refunded ~~as aforesaid but~~ only upon receipt by the Secretary of Revenue of a written demand for ~~such~~ the refund from the taxpayer. Provided, however, that no overpayment shall be refunded irrespective of whether upon discovery or receipt of written demand if ~~such~~ the discovery is not made or ~~such~~ the demand is not received within three years from the date set by the statute for the filing of the return or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later. The provisions of this paragraph shall not apply to interest required under G.S. 105-267. When a husband and wife have elected ~~under G.S. 105-152(e) to file their separate income tax returns on a single form~~ under G.S. 105-152.1 to file a joint return and a refund for overpayment of tax is made payable to both spouses as provided in that subsection, the provisions of this section shall apply to ~~such~~ the refund."

Part II.

Savings Clause and Effective Date.

Sec. 2.1. This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 2.2. Notwithstanding the provisions of G.S. 105-163.15, no addition to tax shall be made under G.S. 105-163.15 for a taxable year beginning on or after January 1, 1989, and before January 1, 1990, with respect to any underpayment to the extent the underpayment was created or increased by any provision of Part I of this act.

Sec. 2.3. This act is effective for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 7th day of August, 1989.

S.B. 446 **CHAPTER 729**

AN ACT TO REWRITE THE NORTH CAROLINA MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS ACT OF 1981 IN ORDER TO COMPLY WITH RECENT CHANGES IN FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 47.

"Medicare Supplement Insurance Minimum Standards.

"§ 58-710. *Definitions.*

Unless the context clearly indicates otherwise, the following words, as used in this Article, have the following meanings:

(1) 'Applicant' means (i) in the case of an individual Medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; and (ii) in the case of a group Medicare supplement policy or subscriber contract, the proposed certificate holder.

(2) 'Certificate' means any certificate issued under a group Medicare supplement policy, which certificate has been delivered or issued for delivery in this State.

(3) 'Insurer' includes entities subject to Chapters 57 and 57B of the General Statutes.

(4) 'Medicare' means the 'Health Insurance for the Aged Act', Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(5) 'Policy' means a Medicare supplement policy, which is a group or individual policy of accident and health insurance under this Chapter, a subscriber contract under Chapter 57 of the General Statutes, or an evidence of coverage under Chapter 57B of the General Statutes, that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age.

"§ 58-711. *Applicability and scope.*

(a) Except as otherwise specifically provided, this Article applies to:

(1) All policies delivered or issued for delivery in this State on or after the effective date of this Article; and

(2) All certificates issued under group policies that have been delivered or issued for delivery in this State on or after the effective date of this Article.

(b) This Article does not apply to an insurance contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

(c) This Article does not prohibit or apply to insurance contracts or health care benefit plans, including group conversion policies, that are provided to Medicare eligible persons and that are not marketed or held out to be Medicare supplement policies or benefit plans.

"§ 58-712. *Standards for policy provisions.*

(a) No policy in force in this State shall contain benefits that duplicate benefits provided by Medicare.

(b) The Commissioner shall adopt rules to establish specific standards for provisions of policies. Such standards shall be in addition to and in accordance with applicable State law. No requirement of State law relating to minimum required policy benefits, other than the minimum standards contained in this Article, applies to policies. The standards may include without limitation to: terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage; probationary periods; benefit limitations, exceptions, and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms.

(c) The Commissioner may adopt rules that specify prohibited policy provisions not otherwise specifically authorized by State law that, in the opinion of the Commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a policy.

(d) Notwithstanding any other provision of State law, a policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. A policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

"§ 58-713. *Minimum standards for benefits and claims payments.*

The Commissioner shall adopt rules to establish minimum standards for benefits and claims payments under policies.

"§ 58-714. *Loss ratio standards and filing requirements.*

(a) Every insurer providing group Medicare supplement insurance benefits to a resident of this State pursuant to G.S. 58-711 shall file a

copy of the master policy and any certificate used in this State in accordance with the filing requirements and procedures applicable to group policies issued in this State: Provided, however, that no insurer is required to make a filing earlier than 30 days after insurance is provided to a resident of this State under a master policy issued for delivery outside this State.

(b) Policies shall return to policyholders benefits that are reasonable in relation to the premium charged. The Commissioner shall adopt rules to establish minimum standards for loss ratios of policies on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums in accordance with accepted actuarial principles and practices. Every insurer providing policies or certificates in this State shall annually file its rates, rating schedules, and supporting documentation to demonstrate that it is in compliance with the applicable loss ratio standards of this State. All filings of rates and rating schedules shall demonstrate that the actual and expected losses in relation to premiums comply with the requirements of this Article.

(c) No insurer shall provide compensation to its agents or other producers that is greater than the renewal compensation that would have been paid on an existing policy if the existing policy is replaced by another policy with the same insurer where the new policy benefits are substantially similar to the benefits under the old policy and the old policy was issued by the same insurer or insurer group.

"§ 58-715. *Disclosure standards.*

(a) In order to provide for full and fair disclosure in the sale of policies, no policy or certificate shall be delivered in this State unless an outline of coverage is delivered to the applicant at the time application is made.

(b) The Commissioner shall prescribe the format and content of the outline of coverage required by subsection (a) of this section. For purposes of this section, 'format' means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and arrangement of text and captions. Such outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the exceptions, reductions, and limitations contained in the policy;

(3) A statement of the renewal provisions, including any reservation by the insurer of a right to change premiums; and

(4) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(c) The Commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for Medicare by reason of age, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the Commissioner may require by rule that the information brochure be provided to any prospective insured eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the Commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insured eligible for Medicare by reason of age, but in no event later than the time of policy delivery.

(d) The Commissioner may adopt rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and health insurance policies sold to persons eligible for Medicare by reason of age, other than: Medicare supplement policies; disability income policies; basic, catastrophic, or major medical expense policies; or single premium, nonrenewable policies.

(e) The Commissioner may further adopt rules to govern the full and fair disclosure of the information in connection with the replacement of accident and health insurance policies, subscriber contracts, or certificates by persons eligible for Medicare by reason of age.

"§ 58-716. *Notice of free examination.*

Policies or certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereon stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the insurer in a timely manner.

"§ 58-717. *Filing requirements for advertising.*

Every insurer providing Medicare supplement insurance or benefits in this State shall provide a copy of any Medicare supplement advertisement intended for use in this State whether through written, radio, or television medium to the Commissioner for review or approval by the Commissioner.

"§ 58-718. *Penalties.*

In addition to any other applicable penalties for violations of this Chapter or Chapters 57 or 57B of the General Statutes, the Commissioner may require any person that has violated or is violating any provision of this Article or any rule adopted under this Article to either (i) cease marketing any policy or certificate in this State that is related directly or indirectly to a violation or (ii) take such actions as are necessary to comply with this Article or such rules."

Sec. 2. Article 27B of Chapter 58 of the General Statutes is repealed.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of August, 1989.

S.B. 458 **CHAPTER 730**

AN ACT TO AMEND THE LAW CONCERNING ALARM SYSTEMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74D-2 reads as rewritten:

"*§ 74D-2. Licenses required.*

(a) No person, firm, association or corporation shall engage in or hold itself out as engaging in an alarm systems business without first being licensed in accordance with this act. For purposes of this Chapter an 'alarm systems business' is defined as any person, firm, association or corporation which sells or attempts to sell by engaging in a personal solicitation at a residence or business when combined with personal inspection of the interior of the residence or business to advise on specific types and specific locations of alarm system devices, installs, services, monitors or responds to electrical, electronic or mechanical alarm signal devices, burglar alarms, television cameras or still cameras used to detect burglary, breaking or entering, intrusion, shoplifting, pilferage, or ~~theft, for a fee or other valuable consideration.~~ theft.

~~(b) Any person in possession of a valid Alarm Systems Business License issued under Chapter 74C of the General Statutes before the enactment of this Chapter shall be issued an appropriate substitute license under this Chapter.~~

(c) (1) ~~A~~ No business entity ~~other than a sole proprietorship~~ shall ~~not~~ do business under this Chapter unless the business entity has in its employ a designated resident qualifying agent who meets the requirements for a license issued under ~~this Chapter~~ and who ~~is in fact~~ is, in fact, licensed under the provisions of this ~~Chapter.~~ Chapter, unless

otherwise approved by the Board. Provided, however, that this approval shall not be given unless the business entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice or demand required by or permitted by law to be served upon the business entity by the Alarm Systems Licensing Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a business entity in any other manner or hereafter permitted by law.

(2) For the purposes of this Chapter, a 'qualifying agent' means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the board.

(3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the board within 10 working days. The business entity must obtain a substitute qualifying agent within 30 days after the original qualifying agent ceases to serve as qualifying agent unless the board, in its discretion, extends this period for good cause for a period of time not to exceed three months.

(4) The license certificate shall list the name of at least one designated qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without the prior approval of the Board.

(d) Upon receipt of an application, the board shall cause a background investigation to be made during which the applicant shall be required to show that he meets all the following requirements and qualifications prerequisite to obtaining a license:

(1) That the applicant is at least 18 years of age;

(2) That the applicant is of good moral character and temperate habits. The following shall be *prima facie* evidence that the applicant does not have good moral character or temperate habits: conviction by any local, State, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution or transportation of a controlled substance, drug, narcotic, or alcoholic beverages; conviction of a crime involving

felonious assault or an act of violence; conviction of a crime involving unlawful breaking or entering, burglary, larceny, or of any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this subsection, 'conviction' means and includes the entry of a plea of guilty, plea of no contest, or a verdict rendered in open court by a judge or jury;

(3) That the applicant has the necessary training, qualifications and experience to be licensed.

(e) The board may require the applicant to demonstrate his qualifications by oral or written examination, or both."

Sec. 2. G.S. 74D-3 reads as rewritten:

"*§ 74D-3. Exemptions.*

The provisions of this Chapter shall not apply to:

(1) A ~~person~~ person, firm, association or ~~business~~ corporation which sells or manufactures alarm systems, unless such ~~person~~ persons, firm, association or ~~business~~ corporation makes personal inspections of interiors of residences or businesses to advise on specific types and specific locations of alarm system devices, installs, ~~services~~ services, monitors or responds to alarm systems at or from a protected premises or a premises to be protected and thereby obtains knowledge of specific ~~applications;~~ application or location of the alarm system;

(2) Installation, servicing or responding to fire alarm systems or any alarm device which is installed in a motor vehicle, aircraft or boat;

(3) Installation of an alarm system on property owned by or leased to the installer;

(4) An alarm monitoring company located in another state which does not conduct any business through a personal representative present in this State but which solicits and conducts business solely through interstate communication facilities such as telephone messages, earth satellite relay stations and the United States postal service; and

(5) A person or business providing alarm systems services to a State agency or local government if that person or business has been providing those services to the State agency or local government for more than five years prior to the effective date of this act, and the State agency or local government joins with the person or business in requesting the application of this exemption."

Sec. 3. G.S. 74D-4 reads as rewritten:

"§ 74D-4. *Alarm Systems Licensing ~~Board established; members; terms; vacancies; compensation; officers; meetings.~~ Board.*

(a) The Alarm Systems Licensing Board is hereby established.

(b) The Board shall consist of ~~five~~ seven members: the Attorney General or his designee; ~~one person~~ two persons appointed by the ~~Governor who~~ Governor, one of whom shall be licensed under this ~~Chapter; one person appointed by the Governor who~~ Chapter and one of whom shall be a public member; ~~one person~~ two persons appointed by the General Assembly upon the recommendation of the ~~Lieutenant Governor under~~ President of the Senate in accordance with G.S. ~~120-121 who~~ 120-121, one of whom shall be licensed under this ~~Chapter;~~ Chapter and one of whom shall be a public member; and ~~one person~~ two persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives ~~under~~ in accordance with G.S. ~~120-121 who~~ 120-121, one of whom shall be licensed under this Chapter and one of whom shall be a public member.

(c) Each member shall be appointed for a term of three years and shall serve until a successor is installed. No member shall serve more than two complete three-year consecutive terms. The ~~initial appointments shall be made by October 1, 1983. By October 1, 1986, the General Assembly shall appoint~~ term of each member, other than the Attorney General or his designee, who is serving on the effective date of this act shall terminate on June 30, 1989. Of the appointments made by the General Assembly upon the recommendation of the President of the Senate ~~under G.S. 120-121 a successor to its licensed appointment who also shall be licensed under this Chapter and shall appoint~~ to begin on July 1, 1989, one member shall be for a term of one year and one member shall be for a term of three years. Of the appointments made by the General Assembly upon the recommendation of the Speaker of the House of ~~Representatives under G.S. 120-121 a successor to its public appointment who also shall be a public member. Every three years thereafter the recommendation of the Lieutenant Governor and of the Speaker of the House of Representatives with respect to the licensed and public status of the persons they recommend shall continue likewise to alternate.~~ Representatives, one member shall be appointed for a term of two years and one member shall be appointed for a term of three years. Thereafter all terms shall be for three years.

(d) A vacancy on the Board shall be filled for the unexpired term by the original appointing authority. Vacancies in legislative appointments shall be filled under G.S. 120-122. A vacancy may be created by removal of a Board member, either at the pleasure of the original appointing authority or by the remaining members of the Board for

misconduct, incompetence or neglect of duty. A Board member may only be removed by remaining board members pursuant to a hearing at which the member subject to removal has an opportunity to be heard.

(e) Compensation, per diem and reimbursement for Board members shall be as provided in G.S. 93B-5, except that Board members who are also State or full-time salaried public officers or employees shall only receive the travel allowances set forth in G.S. 138-6.

(f) The Board shall elect a chairman from its membership by majority vote at the first meeting of its fiscal year.

(g) The Board shall meet at the call of the chairman or a majority of the members of the Board. The Board shall adopt rules governing the call and conduct of its meetings. A majority of the current Board membership constitutes a quorum."

Sec. 4. G.S. 74D-7 reads as rewritten:

"*§ 74D-7. Form of license; term; assignability; renewal; posting; branch offices; fees.*

(a) The license when issued shall be in such form as may be determined by the Board and shall state:

(1) The name of the licensee;

(2) The name under which the licensee is to operate; and

(3) The number and expiration date of the license.

(b) The license shall be issued for a term of one year. Each license must be renewed before expiration of the term of the license. Following issuance, the license shall at all times be posted in a conspicuous place in the principal place of business of the licensee. A license issued under this Chapter is not assignable.

(c) No licensee shall engage in any business regulated by this Chapter under a name other than the licensee name or names which ~~appears~~ appear on the certificate issued by the ~~Board or the name of a business entity which the licensee has registered with the~~ Board.

(d) Any branch office of an alarm systems business shall be properly licensed. A separate license, stating the location and licensed qualifying agent, shall be posted at all times in a conspicuous place in each branch office. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch ~~offices, if any,~~ offices. All licensees of a branch office shall notify the Board in writing, within 10 working days after the establishment, closing, or changing of the location of any branch office. A licensed qualifying agent may be responsible for more than one ~~office, in the discretion~~ branch office of an alarm systems business with the prior approval of the Board.

(e) The Board is authorized to charge reasonable application and license fees as follows:

(1) A nonrefundable initial application fee in an amount not to exceed seventy-five dollars ($75.00):

(2) A new or renewal license fee in an amount not to exceed one hundred fifty dollars ($150.00):

(3) A late renewal fee to be paid in addition to the renewal fee due in an amount not to exceed one hundred dollars ~~($100.000).~~ ($100.00), if the license has not been renewed on ~~a~~ or before the expiration date of the license.

(4) A registration fee in an amount not to exceed fifteen dollars ($15.00) plus any fees charged to the board for background checks by the State Bureau of Investigation;

(5) A fee for reregistration of an employee who changes employment to another licensee, not to exceed ten dollars ($10.00).

All fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expense of administering this Chapter."

Sec. 5. G.S. 74D-8 reads as rewritten:

"*§ 74D-8. Registration of persons ~~employed; temporary employment.~~ employed.*

(a) (1) All ~~licensees,~~ licensees of an alarm systems business, upon or before the beginning of employment of ~~an~~ any employee, shall furnish the Board with the following: set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent color photograph(s) of acceptable quality for identification; and statements of any criminal records obtained from ~~county sheriff, chief of police, or clerk of superior court~~ the appropriate authority in each ~~county in North Carolina~~ area where the employee has resided within the immediately preceding ~~24~~ 48 months.

(2) An alarm systems business may not employ any employee unless the employee is properly registered with the Board in compliance with G.S. 74D-8(a)(1)."

Sec. 6. G.S. 74D-9 reads as rewritten:

"*§ 74D-9. ~~Bond and certificate of~~ Certificate liability insurance required; form and approval; ~~action on bonds;~~ suspension for noncompliance.*

(a) to (c) Repealed by Session Laws 1985, c. 561, s. 8, effective July 1, 1986.

(d) No license shall be issued under this act unless the applicant files with the Board evidence of a policy of liability insurance which policy must provide for the following minimum coverage: fifty thousand dollars ($50,000) because of bodily injury or death of one person as a result of the negligent act or acts of the principal insured

or his agents operating in the course and scope of his employment; subject to said limit for one person, one hundred thousand dollars ($100,000) because of bodily injury or death of two or more persons as the result of the negligent act or acts of the principal insured or his agent operating in the course and scope of his or her agency; twenty thousand dollars ($20,000) because of injury to or destruction of property of others as the result of the negligent act or acts of the principal insured or his agents operating in the course and scope of his or her agency.

(e) An insurance carrier shall have the right to cancel such policy of liability insurance upon giving a 30-day notice to the Board. Provided, however, that such cancellation shall not affect any liability on the policy which accrued prior thereto. The policy of liability shall be approved by the Board as to form, execution, and terms thereon.

(f) Every licensee shall at all times maintain on file with the Board a certificate of insurance required by this Chapter in full force and effect and upon failure to do so, the license of such licensee shall be automatically suspended and shall not be reinstated until an application therefor, in the form prescribed by the Board, is filed together with a proper insurance certificate."

Sec. 7. G.S. 74D-10 reads as rewritten:

"*§ 74D-10. Suspension or revocation of ~~licenses;~~ licenses and registrations; appeal.*

(a) The Board may, after notice and an opportunity for hearing, suspend or revoke a license or registration issued under this Chapter if it is determined that the licensee or registrant has:

(1) Made any false statement or given any false information in connection with any application for a license or for the renewal or reinstatement of a license;

(2) Violated any provision of this Chapter;

(3) Violated any rule promulgated by the Board pursuant to the authority contained in this Chapter;

(4) Been convicted of any crime involving moral turpitude or any other crime involving violence or the illegal use, carrying, or possession of a dangerous weapon;

(5) Failed to correct business practices or procedures that have resulted in a prior ~~reprimands~~ reprimand by the Board;

(6) Impersonated or permitted or aided and abetted any other person to impersonate a law-enforcement officer of the United States, this State, or any of its political subdivisions;

(7) Engaged in or permitted any employee to engage in any alarm systems business when not lawfully in possession of a valid license issued under the provisions of this Chapter;

(8) Committed an unlawful breaking or entering, assault, battery, or kidnapping;

(9) Committed any other act which is a ground for the denial of an application for a license under this Chapter;

(10) Failure to maintain the certificate of liability required by this Chapter;

(11) Any judgment of incompetency by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or commitment to a mental health facility for treatment of mental illness, as defined in G.S. 122-36(d), by a court having jurisdiction under Article 5A of Chapter 122 of the General ~~Statutes.~~ Statutes;

(12) Accepted payment in advance for services not performed within a reasonable time period.

(b) The revocation or suspension of ~~a~~ license or registration by the Board as provided in subsection (a) shall be in writing, stating the grounds upon which the Board decision is based. The aggrieved person shall have the right to appeal from such decision as provided in Chapter 150A of the General Statutes."

Sec. 8. G.S. 74D-11 reads as rewritten:

"*§ 74D-11. Enforcement.*

(a) The Board is authorized to apply in its own name to any judge of the Superior Court of the General Court of Justice for an injunction in order to prevent any violation or threatened violation of the provisions of this Chapter.

(b) Any person, firm, association, or corporation of their agents and employees violating any of the provisions of this Chapter or knowingly violating any rule promulgated to implement this Chapter shall be guilty of a misdemeanor and punishable by a fine of up to five hundred dollars ($500.00), by imprisonment for a term not to exceed one year, or by both, in the discretion of the court. The Attorney General, or his representative, shall have concurrent jurisdiction with the district attorneys of this State to prosecute violations of this Chapter.

(c) The regulation of alarm systems businesses shall be exclusive to the Board; however, any city or county shall be permitted to require an alarm systems business operating within its jurisdiction to register and to supply information regarding its license, and may adopt an ordinance to require users of alarm systems to obtain revocable permits when alarm usage involves automatic signal transmission to a law-enforcement agency.

(d) In lieu of revocation of suspension of a license under G.S. 74D-10, a civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person who violates any

provision of this Chapter, or any rule of the Board adopted pursuant to this Chapter. In determining the amount of any penalty, the Board shall consider the degree and extent of harm caused by the violation. All penalties collected under this section will be deposited in the General Fund.

(e) Proceedings for the assessment of civil penalties shall be governed by Chapter 150B of the General Statutes. If the person assessed a penalty fails to pay the penalty to the Board, the Board may institute an action in the superior court of the county in which the person resides or has his principal place of business to recover the unpaid amount of the penalty. An action to recover a civil penalty under this section shall not relieve any party from any other penalty prescribed by law."

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of August, 1989.

S.B. 510 **CHAPTER 731**

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND TO THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM REGARDING CERTAIN EXCESS CONTRIBUTIONS OF RETIRED MEMBERS AND TO MODIFY CHAPTER 1061 OF THE 1987 SESSION LAWS AS IT RELATES TO FUNDING AND EFFECTIVE DATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-5(f1) reads as rewritten:

"(f1) Upon submission of an application, there shall be paid to any member at retirement or thereafter or surviving beneficiary of a member a refund of contributions not withdrawn with regular interest thereon, equal to (i) additional contributions made under the provisions of Section 2 of Chapter 1053 of the 1953 Session Laws of North Carolina with respect to membership service prior to 1953 and (ii) ~~the contributions made at the rate of two percent (2%) of compensation not subject to coverage under the Social Security Act during the period January 1, 1955, to June 30, 1963;~~ the contributions made by Cooperative Agricultural Extension Service Employees on compensation not subject to coverage under the Social Security Act during the period January 1, 1955, to June 30, 1963; provided that such return of contributions shall be payable only if such contributions did not in any way benefit the member under the provisions of this ~~Chapter~~ Chapter; provided further that this

subsection shall apply as well to any former Cooperative Agricultural Extension Service Employee who obtained a refund of contributions for the period January 1, 1955, to June 30, 1963, and who subsequently purchased the creditable service forfeited by paying the contributions withdrawn and interest thereon."

Sec. 2. G.S. 128-27(f2) reads as rewritten:

"(f2) Upon the submission of an application, there shall be paid to any ~~member,~~ member at retirement or thereafter or surviving beneficiary of a ~~member, who was covered under this System and the Teachers' and State Employees' Retirement System for the same period of service~~ member a ~~return~~ refund of contributions not withdrawn with regular interest thereon, equal to the contributions made by Cooperative Agricultural Extension Service Employees on compensation excluded from coverage under Title II of the Social Security Act representing the difference in the rate applicable to Cooperative Agricultural Extension Service Employees and the rate applicable to other employees of the participating employer ~~at the rate of two percent (2%) of compensation not subject to coverage under the Social Security Act~~ during the period January 1, 1955, to June 30, 1965; provided that such return of contributions shall be payable only if such contribution did not in any way benefit the member under any provision of this Article. Provided further that this subsection shall apply to any former Cooperative Agricultural Extension Service employee who obtained a refund and subsequently purchased the creditable service forfeited by paying the contributions withdrawn and interest thereon."

Sec. 3. Section 3 of Chapter 1061 of the 1987 Session Laws is rewritten to read:

"The Board of Trustees of the Teachers' and State Employees' Retirement System shall reserve the sum of one million five hundred thousand dollars ($1,500,000) and the Board of Trustees of the Local Governmental Employees' Retirement System shall reserve the sum of five hundred thousand dollars ($500,000) from unencumbered actuarial gains in the Retirement Systems for the year ending December 31, 1987, for the purpose of funding this act. Applications for refunds under this act shall be made on or before July 1, 1994."

Sec. 4. This act is effective July 1, 1989.

In the General Assembly read three times and ratified this the 7th day of August, 1989.

S.B. 533 **CHAPTER 732**

AN ACT TO EXTEND THE PROTECTION OF THE AUCTIONEER RECOVERY FUND TO PERSONS INJURED BY

ACTS OF AUCTIONEER BUSINESSES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 85B-4(g) reads as rewritten:

"(g) A sole proprietorship, partnership, or corporation which in the regular course of business promotes auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions, must be licensed as an auctioneer business even though no owner or officer of that business acts as an auctioneer. To be licensed as an auctioneer business the sole proprietorship, partnership or corporation must ~~file an approved bond as required for a licensed auctioneer by subsection (f)~~ make the contribution to the Auctioneer Recovery Fund as required by G.S. 85B-4.1 and must pay the proper fees as set out in G.S. 85B-6, but is not otherwise required to meet qualifications for an auctioneer license. Licensed auctioneer businesses shall be covered by the provisions of G.S. 85B-8."

Sec. 2. G.S. 85B-4.1 reads as rewritten:

"*§ 85B-4.1. Auctioneer Recovery Fund.*

(a) In addition to the license fees provided for ~~above.~~ elsewhere in this Chapter, upon the application for a license ~~and upon renewal of every license and every regular renewal date thereafter,~~ or the renewal of a license, or both, the Commission ~~shall~~ may charge ~~each and every~~ the applicant or licensee an amount not to exceed fifty dollars ($50.00) per year to be included in the Auctioneer Recovery Fund (hereinafter the Fund).

(b) The purposes of the Fund shall be as follows:

(1) When an ~~auctioneer or apprentice auctioneer~~ auctioneer, apprentice auctioneer, or auctioneer business has been found guilty of violating any of the provisions of G.S. 85B or the rules promulgated thereunder, and upon the entry of a final agency decision by the Commission or if appealed, a court order, the Commission is authorized to pay the aggrieved party or parties an aggregate amount not to exceed ten thousand dollars ($10,000) against any one ~~auctioneer or apprentice auctioneer,~~ auctioneer, apprentice auctioneer, or auctioneer business, provided that the ~~auctioneer or apprentice auctioneer~~ auctioneer, apprentice auctioneer, or auctioneer business has refused to pay such claim within a period of 20 days of entry of the final agency decision or court order and provided further that the amount or amounts of money in question are certain and liquidated.

(2) The Commission shall maintain a minimum level of one hundred thousand dollars ($100,000) for recovery and

guaranty purposes. These funds may be invested and reinvested by the State Treasurer in interest bearing accounts, such interest accrued being added to the Fund. Sufficient liquidity will be maintained so that there will be money available to satisfy any and all claims which may be processed through the Board. The Fund may be disbursed by a warrant drawn against the State Treasurer or other method at the discretion of the State Treasurer.

(3) The Commission, in its discretion, may use any and all funds in excess of one hundred thousand dollars ($100,000) for the following purposes:

a. To carry out the advancement of education and research in the auctioneering profession for the benefit of those licensed under the provisions of this Chapter and the improvement of and making even more efficient the industry as such;

b. To underwrite educational seminars, training centers, and other forms of educational projects for the use and benefit generally of licensees;

c. To sponsor, contract for and to underwrite any and all other educational and research projects of a similar nature having to do with the advancement of the auctioneer profession in North Carolina; and

d. To cooperate with associations of auctioneers and any and all other groups for the enlightenment and advancement of the auctioneer profession of North Carolina."

Sec. 3. G.S. 85B-4.2(a) reads as rewritten:

"(a) In the event that an ~~auctioneer or apprentice auctioneer~~ auctioneer, apprentice auctioneer, or auctioneer business is found guilty of violating any of the provisions of G.S. 85B or the rules promulgated thereunder, and if the amount of money lost by the aggrieved party or parties is in dispute or cannot be determined accurately, then the amount of damages shall be determined by the superior court in the county where the alleged violation took place, provided that the Board has previously determined that a violation of the license laws or rules and regulations has occurred and a final agency decision has been entered."

Sec. 4. G.S. 85B-5 reads as rewritten:

"*§ 85B-5. Licensing of nonresidents.*

Any person who holds a valid auctioneer license in another state may apply for and be granted a North Carolina license if the state in which he is licensed has standards which are acceptable to the Commission but are not more lenient than those required by this

Chapter. An applicant under this section shall not be required to take the examination required under G.S. 85B-4 but shall pay the appropriate fee under G.S. 85B-6 and shall file with the Commission an irrevocable consent that service on the secretary of the Commission shall be sufficient service of process for actions against the applicant by a resident of this State arising out of his auctioneering activities.

An applicant under this section shall ~~file the bond~~ make the contribution to the Auctioneer Recovery Fund as required by ~~G.S. 85B-4.~~ G.S. 85B-4.1. Any license issued under this section shall be marked to indicate that its holder is a nonresident."

Sec. 5. G.S. 85B-8(e) reads as rewritten:

"(e) The Commission may upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any auctioneer or apprentice auctioneer or any person who holds himself out as an auctioneer or apprentice auctioneer, and shall have the power to suspend or revoke any license issued under the provisions of this Chapter. In all proceedings for the suspension or revocation of licenses, the provisions of Chapter ~~150A~~ 150B of the General Statutes shall be applicable."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of August, 1989.

S.B. 684 **CHAPTER 733**

AN ACT TO CLARIFY THE APPLICABILITY OF JAIL FEES AND TO ALLOW COUNTIES TO REPRESENT DOCTORS AND DENTISTS IN CERTAIN ACTIONS BROUGHT BY PRISONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-313 reads as rewritten:

"§ *7A-313. Uniform jail fees.*

~~Any person~~ Only persons who are lawfully confined in jail awaiting ~~trial~~ trial, or who are ordered to pay jail fees pursuant to a probationary sentence, shall be liable to the county or municipality maintaining the jail in the sum of five dollars ($5.00) for each 24 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for this fee if ~~a nolle prosequi is entered,~~ the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill."

Sec. 2. G.S. 153A-97 reads as rewritten:

"*§ 153A-97. Defense of officers, employees and others.*

A county may, pursuant to G.S. 160A-167, provide for the defense of:

(1) ~~any~~ Any county officer or employee, including the county board of elections or any county election official~~, and of~~ ;

(2) ~~any~~ Any member of a volunteer fire department or rescue squad which receives public funds; and

(3) Any person or professional association who at the request of the board of county commissioners provides medical or dental services to inmates in the custody of the sheriff and is sued pursuant to 42 U.S.C. § 1983 with respect to the services."

Sec. 3. Section 1 of this act shall become effective October 1, 1989. The remaining sections are effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of August, 1989.

S.B. 714 **CHAPTER 734**

AN ACT TO INCREASE THE PENALTY FOR CONSPIRACY OR SOLICITATION TO COMMIT A MURDER AND CONSPIRACY OR SOLICITATION TO COMMIT MURDER OF CERTAIN PERSONS.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"*§ 14-18.1. Conspiracy or solicitation to commit murder; conspiracy or solicitation to commit murder of a law enforcement officer, State official, juror or witness; punishments.*

(a) Conspiracy to commit murder or solicitation to commit murder is a Class E felony.

(b) Conspiracy to commit murder or solicitation to commit murder of a law enforcement officer, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror or witness or former witness against the defendant while engaged in the performance of his official duties or because of the exercise of his official duties, is a Class D felony."

Sec. 2. This act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 7th day of August, 1989.

S.B. 768 CHAPTER 735

AN ACT TO AUTHORIZE REFUNDING BONDS TO PAY INTEREST ON OUTSTANDING BONDS.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds and determines as hereinafter set forth in this section.

Joint agencies have issued bonds to finance base-load electric generating projects under Chapter 159B. When the bonds were issued, debt service structures were established on the basis of then existing factors. These factors have changed significantly since the debt service structures were established. Adjustment of these debt services schedules would permit the joint agencies to respond to these changed circumstances.

Adjustment of the joint agencies' debt service schedules would permit debt service to more closely match the expected economic lives of the projects in a manner that is consistent with the prudent utility practice of recovering capital costs so that ratepayers bear debt service costs in proportion to the benefits they can expect to receive, and would permit the joint agencies to structure their electric rates in a manner similar to what is now common for private utilities. Utility regulatory commissions have adopted plans providing for the phase-in of recovery of capital costs of capital-intensive generating projects, thus deferring recovery of these costs in rates.

Adjustments in debt service schedules would also permit the joint agencies to extend the utilization of reserves providing enhanced flexibility to the joint agencies in managing their fiscal affairs in a prudent manner.

It is necessary and desirable to amend Chapter 159B to permit existing modification of debt service schedules to reflect these circumstances, but only if the municipality or joint agency can adequately service its debt and otherwise is in compliance with the provisions of Chapter 159B.

The circumstances affecting joint agencies are not of broad application, and accordingly the provisions of this act affect only Chapter 159B and grant new authority only for the period through June 30, 1992.

Sec. 2. G.S. 159B-25 reads as rewritten:

"§ *159B-25. Refunding bonds.*

(a) A municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds of the municipality or joint agency for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this

Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. ~~The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the municipality or joint agency in respect to the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate thereof.~~

(b) In addition to any refunding bonds that may be issued pursuant to subsection (a), a municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of providing for the payment of any interest accrued or to accrue on any bonds which shall have been issued by the joint agency under the provisions of the Chapter; provided, however, that the refunding bonds are issued on or prior to June 30, 1992, and the latest maturity of the refunding bonds issued for a project is no later than the latest maturity of any other bonds issued by the municipality or joint agency, as the case may be, then outstanding for the same project; and provided further that the Local Government Commission shall conduct an evidentiary hearing and upon the evidence presented find and determine that:

(1) The municipality's or the joint agency's debt will be managed in strict compliance with law;

(2) The requirements of this Chapter with respect to the issuance of its bond and the details thereof and security therefor have been and will be satisfied;

(3) The estimated revenues of the project or the revenues of the municipality's electric system, as the case may be, will be sufficient to service all bonds to be outstanding after the issuance of the refunding bonds;

(4) The application of the proceeds of the refunding bonds will result in the deferral of recovery in rates of a portion of the capital costs of the project for a reasonable period of time;

(5) All capital costs of the project will be recovered over a period ending, and all bonds issued for the project will mature, no later than the end of the then estimated useful economic life of the project;

(6) The issuance of the bonds is in the best interest of the municipality's or joint agency's electricity customers; and

(7) The bond rating of the State and its several political subdivisions and agencies allowed to issue bonds should not be adversely affected.

(c) The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and

obligations of the municipality or joint agency in respect to the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate thereof."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of August, 1989.

H.B. 1397 **CHAPTER 736**

AN ACT TO PROVIDE SPECIAL RULES FOR USE VALUE TAXATION OF CHRISTMAS TREES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-277.3 reads as rewritten:

"§ *105-277.3. Agricultural, horticultural and forestland --Classification.*

(a) The following classes of property are hereby designated special classes of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed and taxed as hereinafter provided:

(1) Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

(2) Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, which ~~have produced an average gross income of at least one thousand dollars ($1,000),~~ have either:

a. Been used to produce evergreens intended for use as Christmas trees and met the qualifying or gross income requirements established by the Department of Revenue for the land; or

b. Produced an average gross income of at least one thousand dollars ($1,000).

Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products.

(3) Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) In order to come within a classification described in subdivision (a)(1), (2) or (3), above, the property must, if owned by natural persons, also:

(1) Be the owner's place of residence; or

(2) Have been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

If owned by a corporation, the property must have been owned by the corporation or by one or more of its principal shareholders as defined in G.S. 105-277.2(4)b for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed. Notwithstanding the provisions of G.S. 105-277.2(4)b, above, a corporation qualifying for a classification described in G.S. 105- 277.3 shall not lose the benefit of the classification by reason of the death of one of the principal shareholders provided the decedent's ownership passes to and remains in a relative of the decedent.

(c) In addition, property may come within one of the classifications described in subsection (a) above, if (i) it was appraised at its present use value or was eligible for appraisal at its present use value pursuant to that subsection at the time title to the property passed to the present owner, and (ii) at the time title to the property passed to the present owner he owned other property classified under subsection (a). Classification pursuant to this subsection shall not affect any liability for deferred taxes under G.S. 105-277.4(c) if such taxes were otherwise due at the time title passed to the present owner.

(d) Enrollment in the federal Conservation Reserve Program authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, shall not preclude eligibility of land for present use value treatment solely on the grounds that the land is no longer in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum income requirements of this section either separately or in combination with income from actual production. Land enrolled in

the federal Conservation Reserve Program shall be assessed as agricultural land if it is planted in vegetation other than trees, or as forest land if it is planted in trees."

Sec. 2. G.S. 105-277.7 reads as rewritten:

"§ *105-277.7. Use-Value Advisory Board.*

The Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of North Carolina State University. The Board shall annually submit to the Department of Revenue a recommended use-value manual developed in accordance with the guidelines in G.S. 105-289(a)(5). In developing the manual, the Board may consult with federal and State agencies as needed. The Board shall submit to the Department of Revenue recommendations concerning requirements for horticultural land used to produce evergreens intended for use as Christmas trees when requested to do so by the Department.

The Board shall be chaired by the Director of the Agricultural Extension Service of North Carolina State University and shall consist of the following additional members: a representative of the Department of Agriculture, designated by the Commissioner of Agriculture; a representative of the Forest Resources Division of the Department of Natural Resources and Community Development, designated by the Director of that Division; and a representative of the Agricultural Extension Service at North Carolina Agricultural and Technical State University, designated by the Director of the Extension Service. All members shall serve ex officio. The Agricultural Extension Service at North Carolina State University shall provide clerical assistance to the Board."

Sec. 3. G.S. 105-289(a) reads as rewritten:

"(a) It shall be the duty of the Department of Revenue:

(1) To discharge the duties prescribed by law and to take such action and to do such things as may be needful and proper to enforce the provisions of this Subchapter.

(2) To report in reasonably durable form to the General Assembly at each regular session or at such other times as the General Assembly may direct:

a. The proceedings of the Property Tax Commission during the preceding biennium.

b. Recommendations concerning revision of this Subchapter and information concerning the public revenues that may be required by the General Assembly or that the Commission deems expedient and wise.

(3) To report to the Governor on or before the first day of January each year:

a. The proceedings of the Commission during the preceding year.
b. Any recommendations the Commission desires to submit with respect to any matter relating to this Subchapter.

(4) To keep full and accurate records of the Commission's official proceedings.

(5) To prepare and distribute annually to each assessor a manual that establishes five expected net income per acre ranges for agricultural land, horticultural land, and forestland, and establishes a method for appraising nonproductive land as a percentage of the lowest use-value established for productive land. The high and low net income amount in each range may differ by no more than fifteen dollars ($15.00). The basis for establishing each range shall be soil productivity.

For agricultural land, the expected net income per acre ranges shall be based on the actual yields and prices of corn and soybeans over a period of at least the five previous years, and the actual fixed and variable costs, including an imputed management cost, incurred in growing corn and soybeans over the same period of time. The manual shall contain recommended adjustments to the net income per acre ranges for the growing of crops subject to acreage or poundage allotments.

Expected net income per acre ranges shall be similarly established for horticultural land and forestland, using typical horticultural or forest products in various growing regions of the State instead of corn and soybeans.

(6) To establish requirements for horticultural land, used to produce evergreens intended for use as Christmas trees, in lieu of a gross income requirement until evergreens are harvested from the land, and to establish a gross income requirement for this type horticultural land, that differs from the income requirement for other horticultural land, when evergreens are harvested from the land."

Sec. 4. This act is effective for taxable years beginning on or after January 1, 1990. The Department shall establish requirements under G.S. 105-289(a)(6) by January 1, 1990.

In the General Assembly read three times and ratified this the 7th day of August, 1989.

S.B. 494 **CHAPTER 737**

AN ACT TO PROVIDE FOR WINERY SPECIAL SHOW PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1100 is amended by adding a new subdivision to read:

"(16) Winery special show."

Sec. 2. Article 11 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"*§ 18B-1114.1. Authorization of winery special show permit.*

(a) Authorization.--The holder of an unfortified winery, fortified winery, or limited winery permit may obtain a winery special show permit. The holder of a winery special show permit may:

(1) Give free tastings of its wine at trade shows, conventions, wine festivals, and other similar events approved by the Commission.

(2) Sell its products in closed containers at trade shows, conventions, wine festivals, and other similar events approved by the Commission.

(b) Limitation.--A winery special show permit is valid only in a jurisdiction that has approved the establishment of ABC stores or has approved the sale of unfortified wine."

Sec. 3. G.S. 18B-902 is amended by adding a new subdivision to read:

"(28) Winery special show permit -- $100.00."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of August, 1989.

S.B. 855 **CHAPTER 738**

AN ACT TO REQUIRE DISCLOSURE OF PREARRANGEMENT INSURANCE POLICY PROVISIONS AND TO AMEND THE FUNERAL AND BURIAL TRUST FUNDS ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 22A of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"*§ 58-213.13. Disclosure of prearrangement insurance policy provisions.*

(a) As used in this section:

(1) 'Prearrangement' means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of specific funeral services, or the

furnishing or delivery of specific personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker or monument.

(2) 'Prearrangement insurance policy' means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for a purpose the funding of a specific preneed funeral contract or a specific insurance-funded funeral or burial prearrangement, the insured being the person for whose service the funds were paid.

(b) The following information shall be adequately disclosed by the insurance agent at the time an application is made, prior to accepting the applicant's initial premium, for a prearrangement insurance policy:

(1) The fact that a prearrangement insurance policy is involved or being used to fund a prearrangement;

(2) The nature of the relationship among the insurance agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person;

(3) The relationship of the prearrangement insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

(4) The effect on the prearrangement of (i) any changes in the prearrangement insurance policy, including but not limited to, changes in the assignment, beneficiary designation, or use of the policy proceeds; (ii) any penalties to be incurred by the insured as a result of failure to make premium payments; and (iii) any penalties to be incurred or monies to be received as a result of cancellation or surrender of the prearrangement insurance policy;

(5) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the policy proceeds and the amount actually needed to fund the prearrangement; and

(6) Any penalties or restrictions, including geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee."

Sec. 2. G.S. 90-210.31 reads as rewritten:

"§ *90-210.31. Deposit of trust funds.*

(a) Except as provided in this section, all payments of money made to any person, partnership, association or corporation upon any agreement or contract, or any series or combination of agreements or contracts, but not including the furnishing of cemetery lots, crypts, niches, mausoleums, grave markers or monuments, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, are held to be trust funds. The person, partnership, association or corporation receiving the payments is declared to be a trustee thereof, and shall deposit all payments in a financial institution. All of the interest, dividends, increases or accretions of whatever nature earned by the funds deposited in a trust account shall remain with the principal of such account and become a part thereof, subject to all of the regulations concerning the principal of said fund herein contained. ~~The trust fund itself shall be solely liable for all taxes on said fund and its interest, dividends, increases and accretions.~~ Consistent with applicable tax laws, the trust fund may be charged with any taxes on said fund by reason of any interest, dividends, increases or accretions earned thereon, and for the reasonable charges paid by the trustee to itself or others for the preparation of fiduciary tax returns reporting such income. The trustee may establish an individual trust for each contract or a common trust fund for all contracts. The trust accounts shall be carried in the name of the person, partnership, association or corporation to whom pre-need payments are made, but accounting records shall be maintained showing the amounts deposited and invested, and interest, dividends, increases and accretions earned thereon, with respect to each purchaser's contract.

(a1) A funeral establishment licensed by the Commissioner may enter into an inflation-proof pre-need burial contract that establishes a fixed price for services and merchandise to be furnished at a future date regardless of changes in the cost of services and merchandise to the licensed funeral establishment. A licensed funeral establishment that enters into an inflation-proof pre-need burial contract may retain ten percent (10%) of all payments on the contract upon filing with the Commissioner a bond in the amount retained. The bond shall be in a form and with such surety or sureties, including a letter of credit issued by an insured financial institution, as may be required by the Commissioner, conditioned on compliance with G.S. 90-210.31(c1) and G.S. 90-210.32(b). In the event of noncompliance with G.S.

90-210.31(c1) the Commissioner shall disburse the proceeds of the bond in accordance with G.S. 90-210.31(c1), and in the event of noncompliance with G.S. 90-210.32(b) the Commissioner shall disburse the proceeds to the party who made the payments to the licensed funeral establishment. That portion of all payments on the contract not retained by the licensed funeral establishment shall be deposited in a trust fund as provided in subsection (a) of this section.

(b) All payments made under the agreement, contract or plan are and shall remain trust funds with the financial institution until the death of the person for whose service the funds were paid and until the delivery of all merchandise and full performance of all services called for by the agreement, contract or plan, except where payment is made pursuant to G.S. 90-210.32. The trust fund shall be established in an insured account in a financial institution and may be transferred from one approved financial institution to another.

(c) Upon the death of the beneficiary of a pre-need burial contract, the financial institution shall not pay funds it holds in trust under this section to the licensed funeral establishment until a certified statement is furnished to the financial institution that all terms and conditions of the contract have been fully performed by the licensed funeral establishment. Unless otherwise specified in the agreement, contract or plan, the said person, partnership, association or corporation shall have no obligation to deliver any merchandise or perform any services for which payment in full has not been deposited in the financial institution, and any amounts deposited which do not constitute payment in full shall be refunded to the estate of the deceased beneficiary of the plan or credited against the cost of merchandise or services contracted for by representatives of the deceased. Any balance remaining in the fund after payment for the merchandise and services as set forth in the agreement, contract or plan shall be paid to the estate of the beneficiary of the agreement, contract or plan.

(c1) In the event that a person, partnership, association, or corporation other than the contracting licensed funeral establishment to a pre-need burial contract provides the services, merchandise or personal property described in the contract for the beneficiary thereof, the funds deposited in a financial institution pursuant to G.S. 90-210.31(a) together with all interest, dividends, increases or accretions earned on such fund and any amount retained by the licensed funeral establishment pursuant to G.S. 90-210.31(a1) shall be paid to the provider of such services, merchandise or personal property upon submission to the financial institution and the licensed funeral establishment of a certified copy of the death certificate of the beneficiary and a certified copy of the charges for the services, merchandise or personal property provided for the deceased. Any

balance remaining in the financial institution or retained by the licensed funeral establishment after payment to the provider shall be paid to the estate of the beneficiary of the contract. Upon making payment pursuant to this subsection and giving notice of payment to the licensed funeral establishment, the financial institution shall be relieved from all further liability. Upon making payment pursuant to this subsection, the licensed funeral establishment shall be relieved from all further liability. This subsection shall not apply if the pre-need contract provides that it is irrevocable.

(d) Subsection (a) of this section does not apply to contracts for funeral service or merchandise sold as burial insurance policies which are regulated by Article 24A of Chapter 58 of the General Statutes.

(d1) This Article does not apply to pre-need burial contracts or prearrangements for funeral services or merchandise funded, at the direction of the purchaser, with the proceeds of any insurance policy regulated by Chapter 58 of the General Statutes.

(e) The Commissioner shall approve forms for pre-need burial contracts. All such contracts must be in writing, and no contract form shall be used without prior approval of the Commissioner. Any use or attempted use of an oral pre-need burial contract or any written pre-need burial contract in a form not approved by the Commissioner shall be deemed to be a violation of this Article by the person selling services or merchandise thereunder."

Sec. 3. G.S. 90-210.31(d1), set forth in Section 2 of this act, shall become effective retroactively from and after July 1, 1989. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of August, 1989.

S.B. 1151 **CHAPTER 739**

AN ACT TO ALLOW THE TITLING OF WATERCRAFT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 75A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4.

"Watercraft Titling Act.

"§ *75A-32. Short title.*

This act shall be known as the Watercraft Titling Act.

"§ *75A-33. Definitions.*

As used in this Article, unless the context clearly requires a different meaning:

(1) 'Commission' means the North Carolina Wildlife Resources Commission.

(2) 'Watercraft' means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

"§ 75A-34. Who may apply for certificate of title; authority of employees of Commission.

(a) Any owner of any watercraft in this State, which is not titled elsewhere, may apply to the Commission for a certificate of title. The Commission shall issue a certificate of title upon reasonable evidence of ownership, which may be established by affidavits, bills of sale, or other similar documents.

(b) Employees of the Commission are vested with the power to administer oaths and to take acknowledgements and affidavits incidental to the administration and enforcement of this section. They shall receive no compensation for these services.

"§ 75A-35. Form and contents of application.

(a) Every application for a certificate of title shall be made by the owner or his duly authorized attorney-in-fact, and shall contain the name, residence, and mailing address of the owner, a statement of the applicant's title and of all liens or encumbrances upon the watercraft in the order of their priority, and the names and addresses of all persons having any interest in the watercraft and the nature of the interest.

(b) Every application for a certificate shall contain a brief description of the watercraft to be registered, including the name of the manufacturer, State identification number, hull identification number, length, type, and principal material of construction, model year, date of purchase, identification of the motor (including manufacturer's name and serial number, except on motors of 25 horsepower or less), and the name and address of the person from whom the watercraft was purchased.

The application shall be made on forms prescribed and furnished by the Commission and shall contain other information as may be required by the Commission.

"§ 75A-36. Notice by owner of change of address.

Whenever any person, after applying for or obtaining the certificate of title of a watercraft, moves from the address shown in the application or upon the certificate of title, that person shall, within 30 days, notify the Commission in writing of his change of address.

A fee of ten dollars ($10.00) shall be imposed upon anyone failing to comply with this section within the time prescribed.

"§ 75A-37. Certificate of title as evidence; duration; transfer of title.

(a) A certificate of title is *prima facie* evidence of the ownership of a watercraft. A certificate of title shall be in force for the life of the watercraft so long as the certificate is owned or held by the legal holder.

(b) Upon the sale, assignment, or transfer of a watercraft which has been issued a certificate of title under this Article by the legal holder of the certificate, the certificate of title may, at the option of the purchaser or transferee, be delivered to the purchaser or transferee with an assignment on the certificate showing title in the purchaser or transferee. Otherwise, the certificate shall be returned to the Commission for cancellation.

"§ *75A-38. Commission's records; fees.*

(a) The Commission shall maintain a record of any title it issues.

(b) The Commission shall charge a fee of twenty dollars ($20.00) for issue of each certificate of title, and ten dollars ($10.00) for each transfer of title, duplicate title, or recording of a supplemental lien.

"§ *75A-39. Duplicate certificate of title.*

The Commission may issue a duplicate certificate of title plainly marked 'duplicate' across its face upon application by the person entitled to hold the certificate if the Commission is satisfied that the original certificate has been lost, stolen, mutilated, destroyed, or has become illegible. Mutilated or illegible certificates shall be returned to the Commission with the application for a duplicate. If a duplicate certificate of title has been issued and the lost or stolen original is recovered, the original shall be promptly surrendered to the Commission for cancellation.

"§ *75A-40. Certificate to show security interests.*

The Commission, after receiving an application for a certificate of title to a watercraft, shall, upon issuing the certificate of title to the owner, show upon the face of the certificate of title all security interests in the order of their priority as shown in the application.

"§ *75A-41. Security interests subsequently created.*

Security interests, other than a security interest in inventory held for sale to be perfected only as provided in G.S. 25-9-301 to G.S. 25-9-408, created in watercraft by the voluntary act of the owner after the original issue of title to the owner must be shown on the certificate of title. In such cases, the owner shall file an application with the Commission on a blank furnished for that purpose, setting forth the security interests and other information as the Commission requires. The Commission, if satisfied that it is proper that the same be recorded and upon surrender of the certificate of title covering the watercraft, shall thereupon issue a new certificate of title showing their security interests in the order of the priority according to the date of the filing of the application. For the purpose of recording the

subsequent security interest, the Commission may require any secured party to deliver the certificate of title to the Commission. The newly issued certificate shall be sent or delivered to the secured party from whom the prior certificate was obtained.

"§ 75A-42. *Certificate as notice of security interest.*

A certificate of title, when issued by the Commission showing a security interest, shall be deemed adequate notice to the State, creditors, and purchasers that a security interest in the watercraft exists and the recording or filing of the creation or reservation of a security interest in the county or city wherein the purchaser or debtor resides or elsewhere is not necessary and shall not be required. Watercraft, other than those that are inventory held for sale, for which a certificate of title is currently in effect, shall be exempt from the provisions of G.S. 25-9-302, 25-9-304, 25-9-307, 25-9-309, 25-9-312, 25-9-318, and 25-9-401 to 25-9-408 for so long as the certificate of title remains in effect.

"§ 75A-43. *Security interest may be filed within 30 days after purchase.*

If application for the recordation of a security interest to be placed upon a watercraft is filed in the principal office of the Commission within 30 days from the date of the applicant's purchase of the watercraft, it shall be valid to all persons, including the State, as if the recordation had been done on the day the security interest was acquired.

"§ 75A-44. *Priority of security interests shown on certificates.*

The security interests, except security interests in watercraft which are inventory held for sale and which are perfected under G.S. 25-9-301 to 25-9-408, shown upon the certificates of title issued by the Commission pursuant to applications for certificates shall have priority over any other liens or security interests against the watercraft however created and recorded, except for a mechanics lien for repairs, provided that the mechanic furnishes the holder of any recorded lien who may request it with an itemized sworn statement of the work done and materials supplied for which the lien is claimed.

"§ 75A-45. *Legal holder of certificate of title subject to security interest.*

The certificate of title of a watercraft shall be delivered to the person holding the security interest having first priority upon the watercraft and retained by that person until the entire amount of the security interest is fully paid by the owner of the watercraft. The certificate of title shall then be delivered to the secured party next in order of priority and so on, or, if none, then to the owner of the watercraft.

"§ 75A-46. *Release of security interest shown on certificate of title.*

An owner, upon securing the release of any security interest upon a watercraft shown upon the certificate of title issued for the watercraft, may exhibit the documents evidencing the release, signed by the

person or persons making the release, and the certificate of title to the Commission. When it is impossible to secure the release from the secured party, the owner may exhibit to the Commission any available evidence showing that the debt secured has been satisfied, together with a statement by the owner under oath that the debt has been paid. When the Commission is satisfied as to the genuineness and regularity of the satisfied debt, the Commission shall issue to the owner either a new certificate of title in proper form or an endorsement or rider showing the release of the security interest which the Commission shall attach to the outstanding certificate of title.

"§ 75A-47. *Surrender of certificate required when security interest paid.*

It is unlawful and constitutes a misdemeanor for a secured party who holds a certificate of title as provided in this Article to refuse or fail to surrender the certificate of title to the person legally entitled to it within 10 days after his security interest has been paid and satisfied.

"§ 75A-48. *Levy of execution, etc.*

A levy made by virtue of an execution or other proper court order, upon a watercraft for which a certificate of title has been issued by the Commission, shall constitute a lien, subsequent to security interests previously recorded by the Commission and subsequent to security interests in inventory held for sale and perfected as otherwise permitted by law, if and when the officer making the levy reports to the Commission at its principal office, on forms provided by the Commission, that the levy has been made and that the watercraft levied upon has been seized by and is in the custody of the officer. Should the lien thereafter be satisfied or should the watercraft levied upon and seized thereafter be released by the officer, he shall immediately report that fact to the Commission at its principal office. Any owner who, after a levy and seizure by an officer and before the officer reports the levy and seizure to the Commission, fraudulently assigns or transfers his title to or interest in the watercraft, or causes the certificate of title to be assigned or transferred, or causes a security interest to be shown upon such certificate of title, is guilty of a misdemeanor.

"§ 75A-49. *Registration prima facie evidence of ownership; rebuttal.*

Issuance of registration under the provisions of this Chapter shall be *prima facie* evidence of ownership of a watercraft and entitlement to a certificate of title under the provisions of this Article, but the registration and certificate of title shall be subject to rebuttal."

Sec. 2. This act shall become effective January 1, 1990.

In the General Assembly read three times and ratified this the 8th day of August, 1989.

H.B. 694 **CHAPTER 740**

AN ACT TO AUTHORIZE CREATION OF A REGIONAL TRANSPORTATION AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 26.

"Regional Public Transportation Authority.

"*§ 160A-600. Title.*

This Article shall be known and may be cited as the 'Regional Public Transportation Authority Act.'

"*§ 160A-601. Definitions.*

As used in this Article, unless the context otherwise requires:

(1) 'Authority' means a Regional Public Transportation Authority as defined by subdivision (6) of this section.

(2) 'Board of Trustees' means the governing board of the Authority, in which the general legislative powers of the Authority are vested.

(3) 'Population' means the number of persons residing in respective areas as defined and enumerated in the most recent decennial federal census.

(4) 'Public transportation' means transportation of passengers whether or not for hire by any means of conveyance, including but not limited to a street or elevated railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within or working within the territorial jurisdiction of the Authority, excluding charter, tour, or sight-seeing service.

(5) 'Public transportation system' means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking or other facilities, railroads and railroad rights-of-way whether held in fee simple by quitclaim or easement, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. 'Public transportation system' however, does not include streets, roads, or highways except those for ingress and egress to vehicle parking.

(6) 'Regional Public Transportation Authority,' means a body corporate and politic organized in accordance with the

provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(7) 'Unit of local government' means any county, city, town or municipality of this State, and any other political subdivision, public corporation, Authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(8) 'Unit of local government's chief administrative official' means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the unit of local government's administrative duties is vested.

"§ *160A-602. Definition of territorial jurisdiction of Authority.*

An authority may be created for any area of the State that, at the time of creation of the authority, meets the following criteria:

(1) The area consists of three counties:

(2) At least one of those counties contains at least part of a County Research and Production Service District established pursuant to Part 2 of Article 16 of Chapter 153A of the General Statutes; and

(3) The other two counties each:

a. Contain at least one unit of local government that is designated by the Governor of the State of North Carolina as a recipient pursuant to Section 9 of the Urban Mass Transportation Act of 1964, as amended; and

b. Are adjacent to at least one county that contains at least part of a County Research and Production Service District established pursuant to Part 2 of Article 16 of Chapter 153A of the General Statutes.

"§ *160A-603. Creation of Authority.*

(a) The Boards of Commissioners of all three counties within an area for which an authority may be created as defined in G.S. 160A-602 may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the county. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the Authority and shall state the time and place of the public hearing to be held thereof. No county

shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;

(2) A statement that such authority is organized under this Article; and

(3) The names of the three organizing counties.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the Authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the Authority has been duly organized and its officers elected as herein provided the secretary of the Authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the Authority.

(e) The Authority may become a Designated Recipient pursuant to the Urban Mass Transportation Act of 1964, as amended.

"§ *160A-604. Territorial jurisdiction of the Authority.*

(a) The territorial jurisdiction of any authority created pursuant to this Article shall be coterminous with the boundaries of the three counties that organized it.

(b) Except as provided by this Article, the jurisdiction of the Authority may include all local public passenger transportation operating within the territorial jurisdiction of the Authority, but the Authority may not take over the operation of any existing public transportation without the consent of the owner.

(c) The Authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the Interstate Commerce Commission, nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission.

"§ *160A-605. Membership; officers; compensation.*

(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of 13 members, appointed as follows:

(1) The county with the greatest population shall be allocated five members to be appointed as follows:
   a. Two by the board of commissioners of that county;
   b. Two by the city council of the city containing the largest population within that county; and
   c. One by the city council of the city containing the second largest population within that county;

(2) The county with the next greatest population shall be allocated three members to be appointed as follows:
   a. One by the board of commissioners of that county;
   b. One by the city council of the city containing the largest population within that county; and
   c. One jointly by that board of commissioners and city council, by procedures agreed on between them;

(3) The county with the least population shall be allocated two members to be appointed as follows:
   a. One by the board of commissioners of that county; and
   b. One by the city council of the city containing the largest population within that county; and

(4) Three members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.

(b) Voting members of the Board of Trustees shall serve for terms of four years, provided that one-half of the initial appointments shall be for two-year terms, to be determined by lot at the first meeting of the Board of Trustees. Initial terms of office shall commence upon approval by the Secretary of State of the articles of incorporation. The members appointed by the Secretary of Transportation shall serve at his pleasure.

(c) An appointing authority may appoint one of its members to the Board of Trustees. Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(d) Members of the Board of Trustees shall reside within the territorial jurisdiction of the Authority as defined by G.S. 160A-604.

(e) The Board of Trustees shall annually elect from its membership a Chairperson, and a Vice-Chairperson, and shall annually elect a Secretary, and a Treasurer.

(f) Members of the Board of Trustees shall receive the sum of fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the Authority.

"§ *160A-606. Voting; removal.*

(a) Six members of the Board of Trustees shall constitute a quorum for the transaction of business. Except as provided by G.S. 160A-605(a)(4), each member shall have one vote.

(b) Each member of the Board of Trustees may be removed with or without cause by the appointer(s). If the appointment was made jointly by two boards, the removal must be concurred in by both.

(c) Appointments to fill vacancies shall be made for the remainder of the unexpired term by the respective appointer(s) charged with the responsibility for making such appointments pursuant to G.S. 160A-605. All members shall serve until their successors are appointed and qualified, unless removed from office.

"§ *160A-607. Advisory committees.*

The Board of Trustees may provide for the selection of such advisory committees as it may find appropriate, which may or may not include members of the Board of Trustees.

"§ *160A-607.1. Special tax board.*

(a) The special tax board of an authority shall be composed of two representatives from each of the counties organizing the authority appointed annually by the board of commissioners of each of those counties' members at the first regular meeting thereof in January, except that the initial members shall serve a term beginning on the date that the initial terms of the board of trustees of that authority begin under G.S. 160A-605(b), and ending on the last day of December of that year. Each member of the special tax board must be a member of the board of commissioners of the county by which he was appointed. Membership on the special tax board may be held in addition to the offices authorized by G.S. 128-1 or G.S. 128-1.1. Said representatives shall hold office from their appointment until their successors are appointed and qualified, except that when any member of the special tax board ceases for any reason to be a member of the board of commissioners of the county by which he was appointed, he shall simultaneously cease to be a member of said special tax board. Upon the occurrence of any vacancy on said special tax board, the vacancy shall be filled within 30 days after notice thereof by the board of commissioners of the county having a vacancy in its representation. Each member of the special tax board, before entering upon his duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office; and a record of each such

oath shall be filed in the minutes of the respective participating units of local government.

(b) The special tax board shall meet regularly at such places and on such dates as are determined by the special tax board. The initial meeting shall be called jointly by the chairmen of the boards of commissioners of the counties organizing the authority. Special meetings may be called by the chairman of the special tax board on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the special tax board shall constitute a quorum. No vacancy in the membership of the special tax board shall impair the right of a quorum to exercise all the rights and perform all the duties of the special tax board. No action, other than an action to recess or adjourn, shall be taken except upon a majority vote of the entire authorized membership of said special tax board. Each member, including the chairman, shall be entitled to vote on any question.

(c) The special tax board shall elect annually in January from among its members a chairman, vice-chairman, secretary and treasurer, except that initial officers shall be elected at the first meeting of the special tax board.

"§ *160A-608. Purpose of the Authority.*

The purpose of the Authority shall be to finance, provide, operate, and maintain for a safe, clean, reliable, adequate, convenient, energy efficient, economically and environmentally sound public transportation system for the service area of the Authority through the granting of franchises, ownership and leasing of terminals, buses and other transportation facilities and equipment, and otherwise through the exercise of the powers and duties conferred upon it, in order to enhance mobility in the region and encourage sound growth patterns.

Such a service, facility, or function shall be financed, provided, operated, or maintained in the service area of the Authority either in addition to or to a greater or lesser extent than services, facilities, or functions are financed, provided, operated, or maintained for the entirety of the respective units of local government.

"§ *160A-609. Service area of the Authority.*

The service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall not exceed the territorial jurisdiction of the authority and any area it may provide service to under G.S. 160A-610.

"§ *160A-610. General powers of the Authority.*

The general powers of the Authority shall include any or all of the following:

(1) To sue and be sued;

(2) To have a seal;

(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation, within the limit of available funds;

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;

(6) To retain and employ counsel, auditors, engineers and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights which are useful for the Authority's purposes, including but not necessarily limited to parking facilities;

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate or administer any component parts of a public transportation system or to contract for the maintenance, operation or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties, including but not necessarily limited to parking facilities;

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government;

(10) To surrender to the State of North Carolina any property no longer required by the Authority;

(11) To develop and make data, plans, information, surveys and studies of public transportation facilities within the territorial jurisdiction of the Authority, to prepare and make recommendations in regard thereto;

(12) To enter in a reasonable manner lands, waters or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries;

(13) To develop and carry out demonstration projects;

(14) To make, enter into, and perform contracts with private parties, and public transportation companies with respect to the management and operation of public passenger transportation;

(15) To make, enter into, and perform contracts with any public utility, railroad or transportation company for the joint use of property or rights, for the establishment of through routes, joint fares or transfer of passengers;

(16) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation;

(17) With the consent of the unit of local government which would otherwise have jurisdiction to exercise the powers enumerated in this subdivision: to issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements and in all respects to regulate the operation of buses, taxicabs and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the Authority as fully as the unit of local government is now or hereafter empowered to do within the territorial jurisdiction of the unit of local government;

(18) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of public transportation systems outside the territorial jurisdiction of the authority except as provided by subdivision (20) of this section;

(19) To enter into and perform contracts and agreements with other public transportation authorities, regional public

transportation authorities or units of local government pursuant to the provisions of G.S. 160A-460 through 160A-464 (Part 1 of Article 20 of Chapter 160A of the General Statutes); further to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a public transportation system outside the service area of the authority;

(20) To operate public transportation systems extending service into any political subdivision of the State of North Carolina unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board, shall deny consent, but such service may not extend more than 10 miles outside of the territorial jurisdiction of the authority, except that vanpool and carpool service shall not be subject to that mileage limitation;

(21) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees and charges for use of its public transportation system;

(22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority;

(23) To collect or contract for the collection of taxes which it is authorized by law to levy;

(24) To issue bonds or other obligations of the Authority as provided by law and apply the proceeds thereof to the financing of any public transportation system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations; and

(25) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased with or without option to purchase, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety; for these purposes a member of such force shall be a peace officer and, as such, shall have authority

equivalent to the authority of a police officer of the city or county in which said member of such force is discharging such duties.

"§ *160A-611. Authority of Utilities Commission not affected.*

(a) Except as otherwise provided in this Article, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law.

(b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees, charges, routes, and schedules of an Authority for service within its territorial jurisdiction.

"§ *160A-612. Fiscal accountability.*

An Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes.

"§ *160A-613. Funds.*

The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate or lease any of their interests in any property to the Authority. An authority may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Transportation may allocate to an authority any funds appropriated for public transportation, or any funds whose use is not restricted by law.

"§ *160A-613.1. Competition.*

No equipment of the authority may be used for charter, tour, or sight-seeing service.

"§ *160A-614. Effect on existing franchises and operations.*

Creation of the Authority shall not have an effect on any existing franchises granted by any unit of local government; such existing franchises shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the unit of local government regulating local public transportation systems, bus operations, and taxicabs shall continue in full force and effect now and in the future, unless superseded by regulations of the Authority; such superseding, if any, may occur only on the basis of prior mutual agreement between the Authority and the respective unit of local government.

"§ *160A-615. Termination.*

The Board of Trustees may terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of such termination, all property and assets of the Authority not

otherwise encumbered shall automatically become the property of the State of North Carolina, and the State of North Carolina shall succeed to all rights, obligations, and liabilities of the Authority.

"§ 160A-616. *Controlling provisions.*

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling.

"§ 160A-617. *Bonds and notes authorized.*

In addition of the powers granted by this Article, the Authority may issue bonds and notes pursuant to the provisions of the Local Government Bond Act and the Local Government Revenue Bond Act for the purpose of financing public transportation systems or any part thereof and to refund such bonds and notes, whether or not in advance of their maturity or earliest redemption date. Any bond order must be approved by resolution adopted by the special tax board of the Authority. To pay any bond or note issued under the Local Government Bond Act, the Authority may not pledge the levy of any ad valorem tax, but only a tax or taxes it is authorized to levy.

"§ 160A-618. *Equipment trust certificates.*

In addition to the powers here and before granted, the Authority shall have continuing power to purchase equipment, and in connection therewith execute agreements, leases with or without option to purchase, or equipment trust certificates. All money required to be paid by the Authority under the provisions of such agreements, leases with or without option to purchase, and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues, and earnings of the Authority, monies derived from the sale of any surplus property of the Authority and gifts, grants, and contributions from any source whatever. Payment for such equipment or rentals therefore, may be made in installments; the deferred installments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts and title to such equipment may or may not vest in the Authority until the equipment trust certificates are paid.

"§ 160A-619. *Power of eminent domain.*

(a) The Authority shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method, including but not limited to the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority.

(b) Exercise of the power of eminent domain by the Authority shall be in accordance with Chapter 40A of the General Statutes.

"§ 160A-620. *Tax exemption.*

The property of the Authority, both real and personal, its acts, activities and income shall be exempt from any tax or tax obligation; in the event of any lease of Authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee. Otherwise, however, for the purpose of taxation, when property of the Authority is leased to private parties solely for the purpose of the Authority, the acts and activities of the lessee shall be considered as the acts and activities of the Authority and the exemption. The interest on bonds or obligations issued by the Authority shall be exempt from State taxes.

"*§ 160A-621. Removal and relocation of utility structures.*

(a) The Authority shall have the power to require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances or facilities in, upon, under, over, across or along any ways on which the Authority has the right to own, construct, operate or maintain its public transportation system, to relocate such installation, structures, equipment, apparatus, appliances or facilities from their locations, or, in the sole discretion of the affected public utility, railroad, or other public service corporation, to remove such installations, structures, equipment, apparatus, appliances or facilities from their locations.

(b) If the owner or operator thereof fails or refuses to relocate them, the Authority may proceed to do so.

(b1) The Authority shall provide any necessary new locations and necessary real estate interests for such relocation, and for that purpose the power of eminent domain as provided in G.S. 160A-619 may be exercised provided the new locations shall not be in, on or above, a public highway; the Authority may also acquire the necessary new locations by purchase or otherwise.

(b2) Any affected public utility, railroad or other public service corporation shall be compensated for any real estate interest taken in a manner consistent with G.S. 160A-619, subject to the right of the Authority to reduce the compensation due by the value of any property exchanged under this section.

(b3) The method and procedures of a particular adjustment to the facilities of a public utility, railroad or other public service corporation shall be covered by an agreement between the Authority and the affected party or parties.

(c) The Authority shall reimburse the public utility, railroad or other public service corporation, for the cost of relocations or removals which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures,

equipment, apparatus, appliances or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances."

Sec. 1.1. G.S. 40A-3(c) is amended by adding a new subdivision to read:

"(13) A regional transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article."

Sec. 2. G.S. 159-81(1) reads as rewritten:

"(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, and airport authority, a joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, but not any other forms of local government."

Sec. 3. G.S. 159-44(4) reads as rewritten:

"(4) 'Unit,' 'unit of local government,' or 'local government' means counties; cities, towns, and incorporated villages; sanitary districts; mosquito control districts; hospital districts; metropolitan sewerage districts; metropolitan water districts; county water and sewer districts; regional public transportation authorities; and special airport districts."

Sec. 4. G.S. 159-48(e) reads as rewritten:

"(e) Each sanitary district, mosquito control district, hospital district, metropolitan sewerage district, metropolitan water district, county water and sewer district, regional public transportation authority and special airport district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses."

Sec. 5. G.S. 159-51 reads as rewritten:

"*§ 159-51. Application to Commission for approval of bond issue; preliminary conference; acceptance of application.*

No bonds may be issued under this Article unless the issue is approved by the Local Government Commission. The governing board of the issuing unit shall file an application for Commission approval of the issue with the secretary of the Commission. If the issuing unit is a regional public transportation authority, the application must be accompanied by a resolution of the special tax board of that authority

approving of the application. The application shall state such facts and have attached to it such documents concerning the proposed bonds and the financial condition of the issuing unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference to consider the proposed bond issue.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section."

Sec. 6. G.S. 159-85(a) reads as rewritten:

"(a) Neither the State nor a municipality may issue revenue bonds under this Article unless the issue is approved by the Commission. The State Treasurer or the governing board of the issuing municipality or its duly authorized agent, as the case may be, shall file an application for Commission approval of the issue with the secretary of the Commission. If the issuing municipality is a regional public transportation authority, the application must be accompanied by a resolution of the special tax board of that authority approving of the application. The application shall state such facts and have attached to it such documents concerning the proposed revenue bonds and the financial condition of the State or the issuing municipality, as the case may be, and its utilities and enterprises as the secretary may require. The Commission may prescribe the form of the application."

Sec. 7. The Legislative Research Commission shall make a comprehensive study of financing of public transportation in North Carolina, and contracting with the private sector for public transportation services, and report its recommendations to the 1989 Regular Session, (1990 Regular Session) of the General Assembly.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of August, 1989.

H.B. 821 **CHAPTER 741**

AN ACT TO AMEND THE AUTHORITY OF CITIES TO REQUIRE CONNECTION TO WATER AND SEWER LINES WITHIN A COUNTY WATER AND SEWER DISTRICT AND OTHERWISE.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"*§ 162A-93. Certain city actions prohibited.*

(a) No city may duplicate water or sewer services provided by a district under this Article by installing parallel lines and requiring owners of improved property in territory annexed by the city to connect, except with consent of the district governing body.

(b) The provisions of subsection (a) shall not apply if the city council adopts an annexation ordinance including an area served by a district and finds, after a public hearing, that adequate fire protection cannot be provided in the area because of the level of available water service. Notice of the public hearing shall be provided by first class mail to each affected customer and by publication in a newspaper having general circulation in the area, each not less than 10 days before the hearing. The clerk's certification of the mailing shall be deemed conclusive in the absence of fraud. Any resident of the annexed area aggrieved by such a finding of the council may file a petition for review in the superior court in the nature of *certiorari*, within 30 days after the finding.

(c) Provision of public water and sewer services by a district under this Article to an area annexed by a city shall satisfy the city's obligation to provide for water and sewer services under G.S. 160A-35 and G.S. 160A-47. The city may negotiate for purchase of the lines or systems owned and operated by the district.

(d) Upon annexation by a city of an area served by a district under this Article, the city may provide for installation of and use fire hydrants on the district water lines, by arrangement with the district and at the city's cost."

Sec. 2. G.S. 160A-317 reads as rewritten:

"*§ 160A-317. Power to require connections.*

A city may require the owners of improved property located within the city limits and upon or within a reasonable distance of any water line or sewer collection line owned or leased and operated by the city to connect his premises with the water or sewer line or both, and may fix charges for the connections. In lieu of requiring connection under this section and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties which are connected."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of August, 1989.

S.B. 130 **CHAPTER 742**

AN ACT TO PROHIBIT THE DUMPING OF MEDICAL WASTE INTO THE OPEN WATERS OF THE ATLANTIC OCEAN AND INTO THE WATERS OF THE STATE AND TO STRENGTHEN THE SOLID WASTE MANAGEMENT PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-10 is amended by adding a new subsection to read:

"(d) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State any medical waste as defined by G.S. 130A-290 which renders the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes."

Sec. 2. G.S. 75A-18 is amended by adding a new subsection to read:

"(d) A person who:

(1) Willfully violates G.S. 75A-10(d) is guilty of a misdemeanor punishable by imprisonment not to exceed one year, a fine not to exceed ten thousand dollars ($10,000) per day of violation, or both in the discretion of the court.

(2) Willfully violates G.S. 75A-10(d) and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class I felony punishable by imprisonment, a fine not to exceed fifty thousand dollars ($50,000) per day of violation, or both in the discretion of the court."

Sec. 3. G.S. 76-40 reads as rewritten:

"*§ 76-40. Navigable waters; certain practices regulated.*

(a) It shall be unlawful for any person, firm or corporation to place, deposit, leave or cause to be placed, deposited or left, either temporarily or permanently, any trash, refuse, rubbish, garbage, debris, rubble, scrapped vehicle or equipment or other similar waste material in or upon any body of navigable water in this State; 'waste material' shall not include spoil materials lawfully dug or dredged from navigable waters and deposited in spoil areas designated by the Department of Natural Resources and Community Development; violation of this section shall constitute a misdemeanor, punishable by a fine of up to five hundred dollars ($500.00) or imprisonment for up to six months, or both, in the discretion of the court.

(a1) It shall be unlawful for any person, firm or corporation to place, deposit, leave or cause to be placed, deposited, or left, either temporarily or permanently, any medical waste as defined in G.S. 130A-290 in the open waters of the Atlantic Ocean over which the State has jurisdiction or the navigable waters of this State.

(1) A person who willfully violates this subsection is guilty of a misdemeanor punishable by imprisonment not to exceed one year, a fine not to exceed ten thousand dollars ($10,000) per day of violation, or both in the discretion of the court.

(2) A person who willfully violates this subsection and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class I felony punishable by imprisonment, a fine not to exceed fifty thousand dollars ($50,000) per day of violation, or both in the discretion of the court.

(b) No person, firm or corporation shall erect upon the floor of, or in or upon, any body of navigable water in this State, any sign or other structure, without having first secured a permit to do so from the appropriate federal agencies (which would include a permit from the State of North Carolina) or from the Department of Administration, or from the agency designated by the Department to issue such permit. Provided, however, this subsection shall not apply to commercial fishing nets, fish offal, ramps, boathouses, piers or duck blinds placed in navigable waters. Any person, firm or corporation erecting such sign or other structure without a proper permit or not in accordance with the specification of such permit shall be guilty of a misdemeanor and upon conviction shall be fined up to five hundred dollars ($500.00) or imprisoned for up to six months, or both, in the discretion of the court. The State may immediately proceed to remove or cause to be removed such unlawful sign or structure after five days' notice to the owner or erector thereof and the cost of such removal by the State shall be payable by the person, firm or corporation who erected or owns the unlawful sign or other structure and the State may bring suit to recover the costs of the removal thereof.

(c) Whenever any structure lawfully erected upon the floor of, or in or upon, any body of navigable water in this State, is abandoned, such structure shall be removed by the owner thereof and the area cleaned up within 30 days of such abandonment; failure to comply with this section shall constitute a misdemeanor and upon conviction the owner of the abandoned structure shall be fined up to five hundred dollars ($500.00) or imprisoned for not over six months, or both, in the discretion of the court. The State may, after 10 days' notice to the

owner or erector thereof, remove the abandoned structure and have the area cleaned up and the cost of such removal and cleaning up by the State shall be payable by the owner or erector of the abandoned structure and the State may bring suit to recover the costs thereof.

(d) For purposes of this section, the term 'navigable waters' shall not include any waters within the boundaries of any reservoir, pond or impoundment used in connection with the generation of electricity, or of any reservoir project owned or operated by the United States.

(e) The provisions of this section, in the coastal waters of this State, shall be enforced by the Department of Natural Resources and Community Development. In the inland waters of the State, the provisions of this section shall be enforced by the Wildlife Resources Commission. The Department of Natural Resources and Community Development and the Wildlife Resources Commission shall cooperate ~~with the Department of Water and Air Resources~~ in the enforcement of this section."

Sec. 4. G.S. 130A-22(a) reads as rewritten:

"(a) The Secretary may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five ~~hundred~~ thousand dollars ~~($500.00)~~ ($5,000) per day in the case of a violation involving nonhazardous waste. ~~The penalty shall not exceed ten thousand dollars ($10,000) per day in the case of a violation involving hazardous waste.~~ The penalty shall not exceed twenty-five thousand dollars ($25,000) per day in case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars ($50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State."

Sec. 5. G.S. 130A-290 as amended by Section 11 of Chapter 168 of the 1989 Session Laws reads as rewritten:

"*§ 130A-290. Definitions.*

Unless a different meaning is required by the context, the ~~The~~ following definitions shall apply throughout this Article:

(1) 'CERCLA/SARA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 *et seq.*, as amended, and the Superfund

Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

(2) 'Commercial' when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.

(3) 'Disposal' means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(4) 'Garbage' means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

(5) 'Hazardous waste' means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

(6) 'Hazardous waste facility' means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

(7) 'Hazardous waste generation' means the act or process of producing hazardous waste.

(8) 'Hazardous waste disposal facility' means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules adopted under this Article.

(9) 'Hazardous waste management' means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(10) 'Hazardous waste management program' means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.

(11) 'Landfill' means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an

injection well, a hazardous waste long-term storage facility or a surface storage facility.

(12) 'Manifest' means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(12a) 'Medical waste' means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of 'solid waste' in this section.

(13) 'Natural resources' means all materials which have useful physical or chemical properties which exist, unused, in nature.

(14) 'Open dump' means a solid waste disposal site which is not a sanitary landfill.

(15) 'Person' means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(16) 'RCRA' means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 *et seq.*, as amended.

(17) 'Recycling' means the process by which recovered resources are transformed into new products so that the original products lose their identity.

(18) 'Refuse' means all nonputrescible waste.

(19) 'Resource recovery' means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.

(20) 'Reuse' means a process by which resources are reused or rendered usable.

(21) 'Sanitary landfill' means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.

(22) 'Septage' means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids and

sludge of human or domestic origin which is removed from a septic tank system.

(23) 'Septage management firm' means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community sanitary sewage systems that treat or dispose septage.

(24) 'Sludge' means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.

(25) 'Solid waste' means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

a. Fecal waste from fowls and animals other than humans;

b. Solid or dissolved material in:

1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters;
2. Irrigation return flows; and
3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;

c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;

d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).

e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

(26) 'Solid waste disposal site' means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.

(27) 'Solid waste generation' means the act or process of producing solid waste.

(28) 'Solid waste management' means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.

(29) 'Solid waste management facility' means land, personnel and equipment used in the management of solid waste.

(30) 'Storage' means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

(31) 'Treatment' means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. 'Treatment' includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(32) 'Unit of local government' means a county, city, town or incorporated village."

Sec. 6. G.S. 130A-294 as amended by Chapters 168 and 317 of the 1989 Session Laws is amended by adding a new subsection to read:

"(l) Disposal of solid waste in or upon water in a manner that results in solid waste entering waters or lands of the State is unlawful. Nothing herein shall be interpreted to affect disposal of solid waste in a permitted landfill."

Sec. 7. G.S. 143-213(9) reads as rewritten:

"(9) Whenever reference is made in this Article to the 'discharge of waste,' it shall be interpreted to include discharge, spillage, leakage, pumping, placement, emptying, or dumping into waters of the State, or ~~the discharge of waste~~ into any unified ~~sewerage~~ sewer system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State."

Sec. 8. Article 21 of Chapter 143 is amended by adding a new section to read:

"*§ 143-214.2A. Prohibited disposal of medical waste.*

(a) Violation. It is unlawful for any person to engage in conduct which causes or results in the dumping, discharging, or disposal directly or indirectly, of any medical waste as defined in G.S. 130A-290 to the open waters of the Atlantic Ocean over which the State has jurisdiction or to any waters of the State.

(b) Civil Penalty.

(1) A civil penalty of not more than twenty-five thousand dollars ($25,000) may be assessed by the Commission against any person for a first violation of this section and an additional penalty of twenty-five thousand dollars ($25,000) may be assessed for each day during which the violation continues. A civil penalty of not more than fifty thousand dollars ($50,000) may be assessed by the Commission for a second or further violation and an additional penalty of fifty thousand dollars ($50,000) may be assessed for each day during which the violation continues.

(2) The Commission, or its delegate, shall determine the amount of the civil penalty proposed to be assessed under this section and shall notify the person to be assessed of the proposed assessment by registered or certified mail. The notice shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. The notice shall further set forth the opportunity for a contested case proceeding under Chapter 150B. The proposed penalty set forth in the notice issued by the Commission, or its delegate, shall become the final civil

penalty unless it is increased or decreased by the Commission in the final agency decision of a contested case proceeding requested pursuant to Chapter 150B. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the discharge of waste or the damages to resources occurred or in Wake County if the discharge or resource damage occurs in the open waters of the Atlantic Ocean.

(3) In determining the amount of the penalty, the Commission, or its delegate, shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article.

(c) Criminal Penalties.

(1) A person who willfully violates this section is guilty of a misdemeanor punishable by imprisonment not to exceed one year, a fine not to exceed ten thousand dollars ($10,000) per day of violation, or both in the discretion of the court.

(2) A person who willfully violates this section and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class I felony punishable by imprisonment, a fine not to exceed fifty thousand dollars ($50,000) per day of violation, or both in the discretion of the court.

(d) Restoration.

(1) Any person having control over medical waste discharged in violation of this section shall immediately undertake to collect, remove, and dispose of the medical waste discharged and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the medical waste, the person responsible shall take all practicable actions and measures to otherwise contain, treat, and disperse the medical waste; but no chemical or other dispersants or treatment materials shall be used for such purposes unless they shall have been previously approved by the Department.

(2) Notwithstanding the requirements of subdivision (1), the Department is authorized and empowered to utilize any staff,

equipment and materials under its control or supplied by other cooperating State or local agencies, and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary, to collect, investigate, perform surveillance over, remove, contain, treat or disperse or dispose of medical waste discharged into the waters of the State in violation of this section, and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material.

(3) Every person owning or having control over medical waste discharged in violation of, or in circumstances likely to constitute a violation of this section, upon discovery that the discharge of medical waste has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain, remove, treat and dispose of the medical waste. The agent or employee of the department receiving the notification shall immediately notify the Secretary or such member of the permanent staff of the Department as the Secretary may designate.

(4) Any person who discharges medical waste in violation of this section or violates any order or rule of the Commission regarding the prohibitions concerning medical waste, or fails to perform any duty imposed regarding medical waste, and in the course thereof causes the death of, or injury to fish, animals, vegetation or other resources of the State, or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Commission, or causes the incurring of costs by the State for the containment, removal, treatment, or dispersal, or disposal of such medical waste, shall be liable to pay the State damages. Such damages shall be an amount equal to the cost of all reasonable and necessary investigations made or caused to be made by the State in connection with such violation and the sum of money necessary to restock such waters, replenish such resources, contain, remove, treat, or disperse, or dispose of such medical waste, or otherwise restore such waters and adjacent lands prior to the injury as such condition is determined by the Commission in conference with the Wildlife Resources Commission, the Marine

Fisheries Commission, and any other State agencies having an interest affected by such violation (or by the designees of any such boards, commissions, and agencies).

(5) Upon receipt of the estimate of damages caused, the Department shall give written notice by registered or certified mail to the person responsible for the death, killing, or injury to fish, animals, vegetation, or other resources of the State, or any reduction in quality of the waters of the State, or the costs of the removal, treatment or disposal of such discharge, describing the damages and their causes with reasonable specificity, and shall request payment from such person. Damages shall become due and payable upon receipt of such notice. The Environmental Management Commission, if collection or other settlement of the damages is not obtained within a reasonable time, shall bring a civil action to recover such damages in the superior court in the county in which the discharge of waste or the damages to resources occurred, or in Wake County if the discharge or resource damage occurs in the open waters of the Atlantic Ocean. The assessment of damages is not a contested case under G.S. 150B-23.

(6) 'Person having control over medical waste' shall mean, but shall not be limited to, any person using, storing, or transporting medical waste immediately prior to a discharge of such waste into the waters of the State, and specifically shall include carriers and bailees of such medical waste."

Sec. 9. Neither the definition of "medical waste" nor any other provision of this act shall be construed to require that rules or standards adopted by the Commission for Health Services for the management of infectious and noninfectious medical waste be identical or similar. Neither the definition of "medical waste" nor any other provision of this act shall be construed to prohibit any discharge of waste into a sanitary sewer or sewer system which is otherwise allowed under any provision of the General Statutes or under any rule adopted by the Commission for Health Services or the Environmental Management Commission.

Sec. 10. This act shall become effective 1 October 1989 and shall apply to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 9th day of August, 1989.

S.B. 192 CHAPTER 743

AN ACT TO ALLOW COUNTIES AND MUNICIPALITIES TO REGULATE THE ABANDONMENT OF JUNKED MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-132.2 reads as rewritten:

"*§ 153A-132.2. Regulation, restraint and prohibition of abandonment of junked motor vehicles.*

(a) ~~Dare, Halifax, Wake, Iredell, Cabarrus, Moore, Alamance, Ashe, Bladen, Brunswick, Burke, Caldwell, Cumberland, Davie, Gaston, Guilford, Henderson, Jackson, Lincoln, New Hanover, Pender, Rockingham, Rowan, Surry, Wayne, Stokes, Alleghany, Carteret and Columbus Counties~~ A county may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the county's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing and disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon counties. Nothing in this section shall be construed to authorize a county to require the removal or disposal of a motor vehicle kept or stored at a bona fide 'automobile graveyard' or 'junkyard' as defined in G.S. 136-143.

For purposes of this section, the term 'junked motor vehicle' means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) Is more than five years old and appears to be worth less than one hundred dollars ($100.00).

(a1) Any junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the board of commissioners or a duly authorized county official or employee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the

corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered:

(1) Protection of property values;

(2) Promotion of tourism and other economic development opportunities;

(3) Indirect protection of public health and safety;

(4) Preservation of the character and integrity of the community; and

(5) Promotion of the comfort, happiness, and emotional stability of area residents.

(a2) The county may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the county against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the county shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(a3) Hearing Procedure. -- Regardless of whether a county does its own removal and disposal of motor vehicles or contracts with another person to do so, the county shall provide a prior hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the county operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the county operates in such a way that it is responsible for collecting towing fees, it shall:

a. Provide by contract or ordinance for a schedule of reasonable towing fees,

b. Provide a procedure for a prompt fair hearing to contest the towing,

c. Provide for an appeal to district court from that hearing,

d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and

e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(a4) Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or

negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages."

Sec. 2. G.S. 160A-303.2 as amended by Chapter 3 of the 1989 Session Laws reads as rewritten:

"*§ 160A-303.2. Regulation of abandonment of junked motor vehicles ~~in municipalities in certain counties~~.*

(a) A municipality ~~in Dare, Alamance, Ashe, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Cumberland, Davie, Gaston, Guilford, Halifax, Henderson, Iredell, Jackson, Lincoln, Mecklenburg, Moore, New Hanover, Pender, Rockingham, Rowan, Surry, Wake, Wayne, Stokes, Alleghany, Carteret, Columbus or Union Counties~~ may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the municipality's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing or disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon municipalities. Nothing in this section shall be construed to authorize a municipality to require the removal or disposal of a motor vehicle kept or stored at a bona fide 'automobile graveyard' or 'junkyard' as defined in G.S. 136-143.

For purposes of this section, the term 'junked motor vehicle' means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) Is more than five years old and appears to be worth less than one hundred dollars ($100.00).

(a1) Any junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered:

(1) Protection of property values;
(2) Promotion of tourism and other economic development opportunities;
(3) Indirect protection of public health and safety;
(4) Preservation of the character and integrity of the community; and
(5) Promotion of the comfort, happiness, and emotional stability of area residents.

(a2) The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(a3) Hearing Procedure. -- Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city shall provide a prior hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
(2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:
    a. Provide by contract or ordinance for a schedule of reasonable towing fees,
    b. Provide a procedure for a prompt fair hearing to contest the towing,
    c. Provide for an appeal to district court from that hearing,
    d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
    e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(a4) Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages."

Sec. 3. G.S. 20-219.10 reads as rewritten:

"*§ 20-219.10. Coverage of Article.*

(a) This Article applies to each towing of a vehicle that is carried out pursuant to G.S. 115C-46(d) or G.S. 143-340(19), or pursuant to the direction of a law-enforcement officer except:

(1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, ~~and~~ 160A-303, and 160A-303.2 only insofar as specifically provided;

(2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1, 18B-504, 90-112, 113-137, or to any other seizure of a vehicle for evidence in a criminal proceeding or pursuant to any other statute providing for the forfeiture of a vehicle;

(3) This Article does not apply to a seizure of a vehicle pursuant to a levy under execution.

(b) A person who authorizes the towing of a vehicle covered by this Article, G.S. 115D-21, 116-44.4, 116-229, 153A-132, ~~or~~ 153A-132.2, 160A-303 or 160A-303.2 is a legal possessor of the vehicle within the meaning of G.S. 44A-1(1)."

Sec. 4. This act is effective October 1, 1989, and does not affect the validity of any ordinance passed prior to the effective date of this act.

In the General Assembly read three times and ratified this the 9th day of August, 1989.

S.B. 245 **CHAPTER 744**

AN ACT TO CREATE THE NURSING POOL LICENSURE ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131E of the General Statutes is amended by adding the following new Part to read:

"Part E. Nursing Pool Licensure Act.

"*§ 131E-154.1. Title; purpose.*

(a) This Part shall be known as 'Nursing Pool Licensure Act'.

(b) The purpose of this Part is to establish licensing requirements for nursing pools.

"*§ 131E-154.2. Definitions.*

As used in this Part, unless the context clearly implies otherwise:

(1) 'Commission' means the North Carolina Medical Care Commission.

(2) 'Department' means the Department of Human Resources.

(3) 'Health Care Facility' means a hospital, psychiatric facility; rehabilitation facility; long-term care facility; home health

agency; intermediate care facility for the mentally retarded; chemical dependency treatment facility; and ambulatory surgical facility.

(4) 'Nursing pool' means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nursing personnel, including nurses, nursing assistants, nurses aides, and orderlies. 'Nursing pool' does not include an individual who engages solely in providing his own services on a temporary basis to health care facilities.

"§ *131E-154.3. Licensing.*

(a) No person shall operate or represent himself to the public as operating a nursing pool without obtaining a license from the Department.

(b) The Department shall provide applications for nursing pool licensure. Each application filed with the Department shall contain all information requested. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and with the rules adopted by the Commission. Each license shall be issued only for the premises and persons named, shall not be transferrable or assignable except with the written approval of the Department, and shall be posted in a conspicuous place on the licensed premises.

(c) The Department shall renew the license in accordance with this Part and with rules adopted pursuant to it.

(d) Nursing pools administered by health care facilities and agencies licensed under Article 5 or 6 of Chapter 131E of the General Statutes shall not be required to be separately licensed under this Article. However, any facility or agency exempted from licensure as a nursing pool under this subsection shall be subject to rules adopted pursuant to this Article.

"§ *131E-154.4. Rules and enforcement.*

(a) The Commission shall adopt, amend, and repeal all rules necessary for the implementation of this Part. These rules shall include the following requirements:

(1) The nursing pool shall document that each employee who provides care meets the minimum licensing, training, and continuing education standards for the position in which the employee will be working;

(2) The nursing pool shall comply with all other pertinent regulations relating to the health and other qualifications of personnel;

(3) The nursing pool shall carry general and professional liability insurance to insure against the loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in the provision of health care services by the nursing pool or its employees;

(4) The nursing pool shall have written administrative and personnel policies to govern the services that it provides. These policies shall include those concerning patient care, personnel, training and orientation, supervision, employee evaluation, and organizational structure; and

(5) Any other aspects of nursing pool services that may need to be regulated to protect the public.

(b) The Commission shall adopt no rules pertaining to the regulation of charges by the nursing pool or to wages paid by the nursing pool.

"§ 131E-154.5. *Inspections.*

The Department shall inspect all nursing pools that are subject to rules adopted pursuant to this Part in order to determine compliance with the provisions of this Part and with rules adopted pursuant to it. Inspections shall be conducted in accordance with rules adopted by the Commission.

"§ 131E-154.6. *Adverse action on a license; appeal procedures.*

(a) The Department may suspend, revoke, annul, withdraw, recall, cancel, or amend a license when there has been a substantial failure to comply with the provisions of this Part or with the rules adopted pursuant to it.

(b) The provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases in which the Department has taken the action described in subsection (a) of this section.

"§ 131E-154.7. *Injunction.*

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may maintain an action in the name of the State for injunctive relief or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a nursing pool without a license or to restrain or prevent substantial noncompliance with this Part or the rules adopted pursuant to it.

(b) If any person hinders the proper performance of duty of the Department in carrying out the provisions of this Part, the Department may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance.

"§ 131E-154.8. *Confidentiality.*

(a) Notwithstanding G.S. 8-53 or any other law pertaining to confidentiality of communications between physician and patient, in the course of an inspection conducted pursuant to G.S. 131E-154.5:

(1) Department representatives may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any person who is or has been a nursing pool patient; and

(2) Any person involved in treating a patient at or through a nursing pool may disclose information to a Department representative unless the patient objects in writing to review of his records or disclosure of the information. A nursing pool shall not release any information or allow any inspections under this section without first informing each affected patient in writing of his right to object to and thus prohibit release of information or review of records pertaining to him.

A nursing pool, its employees, and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of the information to the Department.

(b) The Department shall not disclose:

(1) Any confidential or privileged information obtained under this section unless the patient or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure; or

(2) The name of anyone who has furnished information concerning a nursing pool without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. Any Department employee who willfully discloses this information without appropriate authorization or court order shall be guilty of a misdemeanor and, upon conviction, fined at the discretion of the court but not in excess of five hundred dollars ($500.00).

(c) All confidential or privileged information obtained under this section and the names of all persons providing this information are exempt from Chapter 132 of the General Statutes."

Sec. 2. The North Carolina Study Commission on Aging established by Article 21 of Chapter 120 of the General Statutes may study the need for regulation of agencies not licensed under State statute or certified for Medicare that provide nursing and nurse's aide services to persons at home. The North Carolina Study Commission on Aging may report its findings, including any legislative recommendations, to the 1991 General Assembly.

Sec. 3. Nothing in this act obligates the General Assembly to appropriate funds to implement its terms. The Department of Human

Resources shall implement this act to the extent that funds are available within the Department's budget or are appropriated by the General Assembly. The Department of Human Resources shall report to the Joint Legislative Commission on Governmental Operations by April 1, 1990 on any funds expended in the implementation of this act and on projected costs for the full implementation of this act.

Sec. 4. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 9th day of August, 1989.

S.B. 693 **CHAPTER 745**

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING OF A SELF-LIQUIDATING RESEARCH FACILITY TO BE LEASED TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BY THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL AND A SELF-LIQUIDATING RESEARCH FACILITY FOR THE INSTITUTE OF MARINE SCIENCES OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to authorize the design, construction and equipping, by the University of North Carolina at Chapel Hill ("the Institution") of a research facility (the "Project") to be located on the campus of the Institution, to be leased by the Institution, as Lessor, to the United States Government or any agency thereof as Lessee, to be used by the United States Environmental Protection Agency pursuant to a lease (the "Lease") with a term not to exceed 30 years, and to be designed, constructed, equipped and financed at a cost not to exceed thirty million dollars ($30,000,000) and to authorize the financing of the Project through the issuance of bonds to be repaid solely from revenue derived from the Project.

Sec. 2. For the purpose of financing the Project, the Board of Governors of The University of North Carolina ("the Board") is authorized to issue, subject to the approval of the Director of the Budget, provided the Director of the Budget may consult with the Advisory Budget Commission, revenue bonds, according to the procedures and under the terms mandated by G.S. 116-41.1 through G.S. 116-41.12, except as those terms are modified by this act.

The Board in the resolution authorizing the issuance of revenue bonds under this act may provide for a pledge to the payment of such revenue bonds and the interest thereon of the revenue derived from the Project and also for a pledge of the revenues derived from any

future improvements, betterments or extensions of the Project, without regard to whether the operations involved are deemed governmental or proprietary, it being the purpose hereof to vest in the Board broad powers which shall be liberally construed. So long as any revenues mentioned in this paragraph are pledged for the payment of the principal of or interest on the revenue bonds issued hereunder, such revenues shall be deposited in a special fund and shall be applied and used only as provided in the resolution authorizing such revenue bonds, subject, however, to any prior pledge or encumbrance thereof.

Sec. 3. The Project hereby authorized to be designed, constructed, equipped and financed by this act is a capital project for which the federal government is to be the Lessee of the Project and in which the lease agreement is guaranteed by the federal government. The Lease shall provide that the operating and maintenance expenses shall be borne by the Lessee and that neither the State of North Carolina nor the Institution shall be liable for any operating or maintenance expenses.

Sec. 4. The revenue bonds hereby authorized to be issued shall be secured solely by the revenues received from and guarantees made by the United States Government, or any agency thereof, pursuant to the Lease. The revenue bonds shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such revenue bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the revenue bonds.

Sec. 5. The Institution is hereby authorized to enter into the Lease, as Lessor, of the Project with the United States Government or any agency thereof, as Lessee. The Lease is subject to the approval process set forth in Article 7 of Chapter 146 of the General Statutes. All agreements relating to the financing of the Project are subject to the approval of the Board as set forth in G.S. 116-41.1 through G.S. 116-41.12, except as those terms are modified by this act.

Sec. 6. Pursuant to Chapter 587 of the 1987 Session of the General Assembly of North Carolina and to this act, interest on the revenue bonds issued under this act may be subject to federal income taxation, but shall maintain an exemption from State income taxation, or any other State taxation, if any, including, but not limited to, the tax on intangible personal property now imposed by the State.

Sec. 7. The Director of the Budget, provided the Director of the Budget may consult with the Advisory Budget Commission, may, when in his opinion it is in the best interest of the State to do so, and upon the request of the Board, authorize an increase or decrease in the scope of the Project.

Sec. 8. For the purposes of contracting for the design, construction, equipping and financing of the Project, the Institution shall be exempt from the requirements of G.S. 143-128 and may enter into combined contracts for the design of the Project, combined contracts for the construction of the Project or combined contracts for the design, construction and construction management of the Project.

Sec. 9. The further purpose of this act is to authorize, as a capital improvements project, construction by the University of North Carolina at Chapel Hill of a Visiting Investigator Facility for its Institute of Marine Sciences on the Arendell Street property of the Institute in Morehead City. Financing of the said capital improvements project is authorized in the amount of $106,000, to be met through sale of that house and lot located at 704 Bridges Street, Morehead City, currently held by the University of North Carolina at Chapel Hill for use by its Institute of Marine Sciences, and application of the net proceeds thereof to the authorized capital improvements project, along with application thereto of such other gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of such funds, but not including funds appropriated from the General Fund of the State, as may be available to the University of North Carolina at Chapel Hill for such purpose.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of August, 1989.

S.B. 752 **CHAPTER 746**

AN ACT DEALING WITH INVENTION DEVELOPMENT SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 27.

"Invention Development Services.

"§ *66-189. Definitions.*

As used in this Article, the following terms shall have the meanings given:

(1) 'Contract' or 'contract for invention development services' means a contract by which an invention developer undertakes invention development services for a customer for a stated payment or consideration, whether or not the payment or consideration has yet been made.

(2) 'Customer' means any natural person who is solicited by, inquires about, seeks the services of, or enters into a contract with an invention developer for invention development services.

(3) 'Invention development services' means any act done by or for an invention developer for the procurement or attempted procurement by the invention developer of a licensee or buyer of an intellectual property right in an invention. The term includes the evaluation, perfecting, marketing, brokering, or promoting of an invention, a patent search, and preparation or prosecution of a patent application by a person not registered to practice before the United States Patent and Trademark Office.

(4) 'Invention' means any discovery, process, machine, design, formulation, composition of matter, product, concept, or idea, or any combination of these.

(5) 'Invention developer' is an individual, firm, partnership, or corporation, or an agent, employee, officer, partner, or independent contractor of one of those entities, that offers to perform or performs invention development services for a customer and that is not:

a. A department or agency of the federal, State, or local government;

b. A charitable, scientific, educational, religious, or other organization qualified under G.S. 105-130.9 or described in Section 170(b)(1)(A) of the Internal Revenue Code of 1986, as amended;

c. A person registered before the United States Patent and Trademark Office acting solely within the scope of that person's professional license;

d. A person, firm, corporation, association, or other entity that does not charge a fee, including reimbursement for expenditures made or costs incurred by the entity, for invention development services other than payment made from a portion of the income received by a customer by virtue of the acts performed by the entity; or

e. An attorney licensed to practice law in North Carolina acting solely within the scope of that person's professional license.

(6) 'Business day' means any day other than a Saturday, Sunday, or legal holiday.

"§ 66-190. *Disclosures made prior to contract.*

In either the first written communication from the invention developer to a specific customer, or at the first personal meeting

between the invention developer and a customer whichever may first occur, the invention developer shall make a written disclosure to the customer of the information required in this section which includes:

(1) The median fee charged to all of the invention developer's customers who have signed contracts with the developer in the preceding six months, excluding customers who have signed in the preceding 30 days;

(2) A single statement setting forth (i) the total number of customers who have contracted with the invention developer, except that the number need not reflect those customers who have contracted within the preceding 30 days, and (ii) the number of customers who have received, by virtue of the invention developer's performance of invention development services, an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract for invention development services;

(3) The following statement: 'Unless the invention developer is a lawyer or person registered before the United States Patent and Trademark Office, he is NOT permitted to give you legal advice concerning patent, copyright, trademark law, or the law of unfair competition or to advise you of whether your idea or invention may be patentable or may be protected under the patent, copyright, or trademark laws of the United States, or any other law. No patent, copyright, or trademark protection will be acquired for you by the invention developer. Your failure to inquire into the law governing patent, trademark, or copyright matters may jeopardize your rights in your idea or invention, both in the United States and in foreign countries. Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyrights, patent, or trademark rights of other persons if you proceed to make, use, distribute, or sell your idea or invention.'

"§ *66-191. Standard provisions for cover notice.*

(a) A contract for invention development services must have a conspicuous and legible cover sheet attached. The cover sheet must set forth:

(1) The name, home address, office address, and local address of the invention developer; and

(2) The following notice printed in bold-faced type of not less than 10-point size:

THIS CONTRACT BETWEEN YOU AND AN INVENTION DEVELOPER IS REGULATED BY

ARTICLE 27 OF CHAPTER 66 OF THE GENERAL STATUTES OF THE STATE OF NORTH CAROLINA. YOU ARE NOT PERMITTED OR REQUIRED TO MAKE ANY PAYMENTS UNDER THIS CONTRACT UNTIL FOUR WORKING DAYS AFTER YOU SIGN THIS CONTRACT AND RECEIVE A COMPLETED COPY OF IT.

YOU CAN TERMINATE THIS CONTRACT AT ANY TIME BEFORE YOU MAKE PAYMENT. YOU CAN TERMINATE THIS CONTRACT SIMPLY BY NOT SUBMITTING PAYMENT.

IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE INVENTION TO THE INVENTION DEVELOPER, THE INVENTION DEVELOPER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER SINCE (year) IS (number) . THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER TO HAVE RECEIVED BY VIRTUE OF THIS INVENTION DEVELOPER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION DEVELOPER IS (number) .

YOU ARE ENCOURAGED TO CONSULT WITH A QUALIFIED ATTORNEY BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF A QUALIFIED ATTORNEY YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION.

(b) The invention developer shall complete the cover sheet with the proper information to be provided in the blanks. In the first blank the invention developer shall enter the year that the invention developer began business, or January 1, 1990, whichever is earlier. The numbers entered in the last two blanks need not include those who have contracted with the invention developer during the 30 days immediately preceding the date of the contract. If the number to be inserted in the third blank is zero, it must be so stated.

(c) The cover notice may not contain anything in addition to the information required by subsection (a) of this section.

"*§ 66-192. Contracting requirements.*

(a) Each contract for invention development services by which an invention developer undertakes invention development services for a customer is subject to this act. The contract must be in writing and the invention developer shall give a copy of the contract to the customer at the time the customer signs the contract.

(b) If it is the invention developer's normal practice to seek more than one contract in connection with an invention, or if the invention developer normally seeks to perform services in connection with an invention in more than one phase with the performance of each phase covered in one or more subsequent contracts, the invention developer shall give to the customer at the time the customer signs the first contract:

(1) A written statement describing that practice; and

(2) A written summary of the developer's normal terms, if any, of subsequent contracts, including the approximate amount of the developer's normal fees or other consideration, if any, that may be required from the customer.

(c) For the purposes of this section, delivery of a promissory note, check, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer irrespective of the date or dates appearing in that instrument is payment.

(d) Notwithstanding any contractual provisions of the contrary, payment for invention development services may not be required, made, or received before the fourth business day after the day on which the customer receives a copy of the contract for invention development services signed by the invention developer and the customer.

(e) Until the payment for invention development services is made, the parties during the contract for invention development services have the option to terminate the contract. The customer may exercise the option by refraining from making payment to the invention developer. The invention developer may exercise the option to terminate by giving to the customer written notice of its exercise of the option. The written notice becomes effective on receipt by the customer.

"*§ 66-193. Mandatory contract terms.*

(a) A contract for invention development services shall set forth the information required in this section in at least 10-point type or equivalent size if handwritten.

(b) The contract shall describe fully and in detail the acts or services that the invention developer contracts to perform for the customer.

(c) The contract shall include the terms and conditions of payment and contract termination rights required by G.S. 66-192(e).

(d) The contract shall state whether the invention developer contracts to construct one or more prototypes, models, or devices embodying the customer's invention, the number of such prototypes to be constructed, and whether the invention developer contracts to sell or distribute such prototypes, models, or devices.

(e) If an oral or written estimate of projected customer sales, profits, earnings and/or royalties is made by the invention developer, the contract shall state the estimate and the data upon which it is based.

(f) The contract shall state the expected date of completion of the invention development services, whether or not time is of the essence, and whether or not the terms include provisions in case of delay past the expected date of completion.

(g) The contract shall explain that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for that customer for a period not less than three years after expiration of the term of the contract for invention development services. Further, such records and correspondence will be made available to the customer or his representative for review and copying at the customer's expense on the invention developer's premises during normal business hours upon seven days' written notice, the time period to begin from the date the notice is placed in the United States mail properly addressed and first class postage prepaid.

(h) The contract shall state the name of the person or firm contracting to perform the invention development services, all names under which said person or firm is doing or has done business as an invention developer for the previous 10 years, the names of all parent and subsidiary companies to the firm, and the names of all companies that have a contractual obligation to the firm to perform invention development services.

(i) The contract shall state the invention developer's principal business address and the name and address of its agent in this State who is authorized to receive service of process in North Carolina.

"*§ 66-194. Financial requirements.*

(a) Except as provided by subsection (c) of this section, each invention developer doing business in this State as defined by the North Carolina General Statutes shall maintain a bond issued by a surety company authorized to do business in this State. The principal sum of the bond must be at least five percent (5%) of the invention developer's gross income from the invention development business in this State during the invention developer's last fiscal year or twenty-five thousand dollars ($25,000), whichever is greater. The invention developer shall file a copy of the bond with the Secretary of State

before the day on which the invention developer begins business in this State. The invention developer shall have 90 days after the end of each fiscal year within which to change the bond as may be necessary to conform to the requirement of this subdivision.

(b) The bond required by subsection (a) of this section must be in favor of the State of North Carolina for the benefit of any person who, after entering into a contract for invention development services with an invention developer is damaged by fraud, dishonesty, or failure to provide the services of the invention developer in performance of the contract. Any person claiming against the bond may maintain an action at law against the invention developer and surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond required by the subsection is limited to the amount of the bond.

(c) Instead of furnishing the bond required by subsection (a) of this section, the invention developer may deposit with the Secretary of State a cash deposit equal to the amount of the bond required by this section. The cash deposit may be satisfied by:

(1) Certificates of deposit payable to the Secretary of State issued by banks doing business in this State and insured by the Federal Deposit Insurance Corporation;

(2) Investment certificates of share accounts assigned to the Secretary of State and issued by a savings and loan association doing business in this State, and insured by the Federal Savings and Loan Insurance Corporation;

(3) Bearer bonds issued by the United States government or by this State; or

(4) Cash deposit with the Secretary of State.

"§ *66-195. Remedies.*

(a) Any contract for invention development services that does not substantially comply with this Article is voidable at the option of the customer. A contract for invention development services entered into in reliance on any false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer is voidable at the option of the customer. Any waiver by the customer of any provision of this act shall be deemed contrary to public policy and shall be void and unenforceable.

(b) Any customer or person who has been injured by a violation of this Article by an invention developer, by a false or fraudulent statement, representation, or omission of material fact by an invention developer, or by failure of an invention developer to make all disclosures required by this Article may recover in a civil action against the invention developer:

(1) Court costs;

(2) Attorneys fees; and

(3) The amount of actual damages, if any, sustained by the customer, which damages may be increased to an amount not to exceed three times the damages sustained.

"§ 66-196. *Enforcement.*

The Attorney General shall enforce this Article and may recover a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of this Article and may seek equitable relief to restrain the violation of this Article."

Sec. 2. This act shall become effective January 1, 1990.

Sec. 3. The provisions of this act shall expire on June 30, 1991.

In the General Assembly read three times and ratified this the 9th day of August, 1989.

S.B. 805 **CHAPTER 747**

AN ACT TO ENACT FOR NORTH CAROLINA THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 17.

"Uniform Enforcement of Foreign Judgments Act.

"§ 1C-1701. *Short title.*

This act shall be known and may be cited as the Uniform Enforcement of Foreign Judgments Act.

"§ 1C-1702. *Definitions.*

As used in this Article, unless the context requires otherwise:

(1) 'Foreign Judgment' means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a 'support order,' as defined in G.S. 52A-3(14) (The Uniform Reciprocal Enforcement of Support Act) or a 'custody decree,' as defined in G.S. 50A-2(4) (the Uniform Child Custody Jurisdiction Act).

(2) 'Judgment Debtor' means the party against whom a foreign judgment has been rendered.

(3) 'Judgment Creditor' means the party in whose favor a foreign judgment has been rendered.

"§ 1C-1703. *Filing and status of foreign judgments.*

(a) A copy of any foreign judgment authenticated in accordance with an act of Congress or the statutes of this State may be filed in the

office of the clerk of superior court of any county of this State in which the judgment debtor resides, or owns real or personal property. Along with the foreign judgment, the judgment creditor or his attorney shall make and file with the clerk an affidavit which states that the foreign judgment is final and that it is unsatisfied in whole or in part, and which sets forth the amount remaining unpaid on the judgment.

(b) Upon the filing of the foreign judgment and the affidavit, the foreign judgment shall be docketed and indexed in the same manner as a judgment of this State; however, no execution shall issue upon the foreign judgment nor shall any other proceeding be taken for its enforcement until the expiration of 30 days from the date upon which notice of filing is served in accordance with G.S. 1C-1704.

(c) A judgment so filed has the same effect and is subject to the same defenses as a judgment of this State and shall be enforced or satisfied in like manner; provided however, if the judgment debtor files a motion for relief or notice of defense pursuant to G.S. 1C-1705, enforcement of the foreign judgment is automatically stayed, without security, until the court finally disposes of the matter.

"*§ 1C-1704. Notice of filing; service.*

(a) Promptly upon the filing of a foreign judgment and affidavit, the judgment creditor shall serve the notice of filing provided for in subsection (b) on the judgment debtor and shall attach thereto a filed-stamped copy of the foreign judgment and affidavit. Service and proof of service of the notice may be made in any manner provided for in Rule 4(j) of the Rules of Civil Procedure.

(b) The notice shall set forth the name and address of the judgment creditor, of his attorney if any, and of the clerk's office in which the foreign judgment is filed in this State, and shall state that the judgment attached thereto has been filed in that office, that the judgment debtor has 30 days from the date of receipt of the notice to seek relief from the enforcement of the judgment, and that if the judgment is not satisfied and no such relief is sought within that 30 days, the judgment will be enforced in this State in the same manner as any judgment of this State.

"*§ 1C-1705. Defenses; procedure.*

(a) The judgment debtor may file a motion for relief from, or notice of defense to, the foreign judgment on the grounds that the foreign judgment has been appealed from, or enforcement has been stayed by, the court which rendered it, or on any other ground for which relief from a judgment of this State would be allowed.

(b) If the judgment debtor has filed a motion for relief or notice of defenses then the judgment creditor may move for enforcement of the foreign judgment as a judgment of this State. The judgment creditor's motion shall be heard before a judge of the trial division which would

be the proper division for the trial of an action in which the amount in controversy is the same as the amount remaining unpaid on the foreign judgment. The Rules of Civil Procedure (G.S. 1A-1) shall apply. The judgment creditor shall have the burden of proving that the foreign judgment is entitled to full faith and credit.

"§ 1C-1706. Fees.

The enforcement of a foreign judgment under this Article shall be subject to the costs and fees set forth in Article 28 of Chapter 7A of the General Statutes. The amount remaining unpaid on the foreign judgment as set forth in the affidavit filed under G.S. 1C-1703(b) shall determine the amount of the costs to be collected at the time of the filing of the foreign judgment and assessed pursuant to G.S. 7A-305.

"§ 1C-1707. Optional procedure.

This Article may not be construed to impair a judgment creditor's right to bring a civil action in this State to enforce such creditor's judgment.

"§ 1C-1708. Judgments against public policy.

The provisions of this act shall not apply to foreign judgments based on claims which are contrary to the public policies of North Carolina."

Sec. 2. This act shall become effective October 1, 1989 and shall apply only to those foreign judgments rendered on or after October 1, 1984.

In the General Assembly read three times and ratified this the 9th day of August, 1989.

S.B. 1145 **CHAPTER 748**

AN ACT TO PROVIDE THAT SALES AND USE TAXES DO NOT APPLY TO THE LEASE OR RENTAL OF TOBACCO SHEETS AND TO PERMIT THE NEW HANOVER COUNTY AIRPORT AUTHORITY TO RECEIVE ANNUAL SALES AND USE TAX REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(4d) The lease or rental of burlap tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse."

Sec. 2. Section 4(10) of Chapter 404 of the 1989 Session Laws reads as rewritten:

"(10) Possess the same exemptions in respect to payment of taxes and license ~~fees.~~ fees and be eligible for sales and

use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina."

Sec. 3. Section 1 of this act is effective upon ratification and applies to leases and rentals occurring on or after August 1, 1989. Section 2 of this act is effective upon ratification and applies to sales and use taxes paid on or after July 1, 1989.

In the General Assembly read three times and ratified this the 9th day of August, 1989.

H.B. 397 **CHAPTER 749**

AN ACT TO AMEND THE EXPIRATION DATE FOR PRIVATE CONTRACT PARTICIPATION BY THE DEPARTMENT OF TRANSPORTATION, AND TO INCREASE THE DOLLAR LIMIT ON CONTRACTS THAT MUST BE LET AFTER PUBLIC ADVERTISING.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 860 of the 1987 Session Laws reads as rewritten:

"Sec. 2. This act is effective upon ratification, and shall expire ~~June 30, 1989~~ June 30, 1991."

Sec. 2. G.S. 136-28.1(a) as amended by Chapter 78 of the 1989 Session Laws reads as rewritten:

"(a) All contracts over ~~one hundred fifty thousand dollars ($150,000)~~ three hundred thousand dollars ($300,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal-aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.131(a) for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. The Department of Transportation shall use only the contract provisions provided in the the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, January 1, 1984, except as each may be changed or provided for by rule adopted by the Board of Transportation in accordance with the Administrative Procedure Act."

Sec. 3. G.S. 136-28.1(b) reads as rewritten:

"(b) In those cases in which the amount of work to be let to contract for highway construction or repair is ~~one hundred fifty thousand dollars ($150,000)~~ three hundred thousand dollars ($300,000) or less, at least three informal bids shall be solicited. The term 'informal bids' is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible ~~bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.~~ bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any ~~time.~~ time after the bids are opened."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of August, 1989.

H.B. 1627 **CHAPTER 750**

AN ACT TO INCREASE THE MEMBERSHIP OF THE PRESENT STATE FIRE COMMISSION AND TO EXPAND ITS RESPONSIBILITIES TO INCLUDE RESCUE SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Article 2C of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 2C.

"State Fire and Rescue Commission.

"*§ 58-27.30. State Fire and Rescue Commission created; membership.*

(a) There is created the State Fire and Rescue Commission of the Department ~~of Insurance~~, which shall be composed of ~~12~~ 14 voting members to be appointed as follows:

(1) The Commissioner ~~of Insurance~~ shall appoint ~~nine~~ eleven members, two from nominations submitted by the North Carolina State Fireman's Association, one from nominations submitted by the North Carolina Association of Fire Chiefs, one from nominations submitted by the North Carolina Society of Fire Service Instructors, one from nominations submitted by the North Carolina Association of County Fire Marshals, one from nominations submitted by the North Carolina Fire Marshal's Association, two from nominations submitted by the North Carolina Association of Rescue and Emergency Medical Services, Inc., one mayor or other elected city official nominated by the President of the

League of Municipalities, one county commissioner nominated by the President of the Association of County Commissioners, and one from the public at large;

(2) The Governor shall appoint one member from the public at large; and

(3) The General Assembly shall appoint two members from the public at large, one upon the recommendation of the Speaker of the House of Representatives pursuant to G.S. 120-121, and one upon the recommendation of the President of the Senate pursuant to G.S. 120-121.

Public members may not be employed in State government and may not be directly involved in fire fighting or rescue services.

(b) Of the members initially appointed by the Commissioner ~~of Insurance~~, the nominees of the North Carolina State Firemen's Association and the nominees of the North Carolina Association of Fire Chiefs and of the North Carolina Association of Rescue and Emergency Medical Services, Inc., shall serve three-year terms; the nominees from the North Carolina Society of Fire Service Instructors, the North Carolina Association of County Fire Marshals, and the North Carolina Fire Marshal's Association shall serve two-year terms; and the mayor or other elected city official, the county commissioner, and the member from the public at large shall serve one-year terms. The Governor's initial appointee shall serve a three-year term. The General Assembly's initial appointees shall serve two-year terms. Thereafter all terms shall be for three years.

(c) Vacancies shall be filled by the original appointer in the same manner as the original appointment was made, except that vacancies in the appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(d) Appointed members shall serve until their successors are appointed and qualified.

(e) The following State officials, or their designees, shall serve by virtue of their offices as nonvoting members of the Commission: the Commissioner of Insurance, the Commissioner of Labor, the State Auditor, the Attorney General, the Secretary of Crime Control and Public Safety, the Secretary of Natural Resources and Community Development, and the President of the Department of Community Colleges.

(f) Members of the ~~State Fire~~ Commission shall receive per diem and necessary travel and subsistence allowances in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as appropriate.

"*§ 58-27.31. State Fire and Rescue Commission - Powers and duties.*

(a) The ~~State Fire~~ Commission shall have the following powers and duties:

(1) To formally adopt a State Fire Education and Training Plan, ~~and~~ a State Master Plan for Fire Prevention and Control, a Rescue Training Plan, and a State Master Plan for Rescue Services;

(2) To assist and participate with State and local fire prevention and control agencies in the improvement of fire prevention and control in North Carolina and to work with State and local rescue agencies to improve rescue services in the State;

(3) To increase the professional skills of fire protection and fire-fighting personnel and rescue personnel;

(4) To encourage public support for fire prevention and control and rescue services;

(5) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;

(6) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary and such other powers as may be necessary to carry out the State's duties with respect to all grants to the State by the ~~National Fire Prevention and Control Administration of the United States Department of Commerce~~ United States Fire Administration and the National Fire Academy; and all support programs brought into the State by these two entities shall be coordinated and controlled by the Commission;

(7) To make studies and recommendations for the improvement of fire prevention and control and rescue services in the State and to make studies and recommendations for the coordination and implementation of effective fire prevention and control and rescue services and for effective fire prevention and control and rescue services education;

(8) To set objectives and priorities for the improvement of fire prevention and control and rescue services throughout the State;

(9) To advise State and local interests of opportunities for securing federal assistance for fire prevention and control and rescue services and for improving fire prevention and control and rescue services administration and planning within the State of North Carolina;

(10) To assist State agencies and institutions of local government and combinations thereof in the preparation and processing of applications for financial aid and to

support fire prevention and control, rescue services, and planning and administration;

(11) To encourage and assist coordination at the federal, State and local government levels in the preparation and implementation of fire prevention and control and rescue services administrative improvements and crime reduction plans;

(12) To apply for, receive, disburse and audit the use of funds received ~~for~~ from any public and private agencies and instrumentalities for fire prevention and control and rescue services, ~~its~~ their administration and plans therefor;

(13) To enter into monitoring and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;

(14) To provide technical assistance to State and local fire prevention and control and rescue agencies in developing programs for improvement ~~of the fire prevention and control system~~;

(14a) To serve as a central office for the collection and dissemination of information relative to fire service and rescue service activities and programs in State government. All State government agencies conducting fire service and rescue service related programs and activities shall report the status of these programs and activities to the ~~State Fire~~ Commission on a quarterly basis and they shall also report to the ~~State Fire~~ Commission any new programs or changes to existing programs as they are implemented;

(14b) To establish voluntary minimum professional qualifications for all levels of fire service and rescue service personnel;

(14c) To prepare an annual report to the Governor on its fire prevention and control activities and plans, rescue activities and plans, and to recommend legislation concerning fire prevention and control and rescue services; and

(15) To take such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.

(b) Each State agency involved in fire prevention and control or rescue related activities shall furnish the executive director of the ~~Fire~~ Commission such information as may be required to carry out the intent of this section.

"§ 58-27.32. *State Fire and Rescue Commission - Organization; rules and regulations; meetings.*

(a) Organization. - The ~~State Fire~~ Commission shall elect from its voting members a chairman and vice-chairman to serve as provided by the rules adopted by the Commission.

(b) Rules and Regulations. - The ~~State Fire~~ Commission shall adopt such rules and regulations, not inconsistent with the laws of this State as may be required by the federal government for programs and grants-in-aid for fire protection, ~~and~~ fire-fighting, and rescue purposes which may be made available to the State by the federal government. The ~~State Fire~~ Commission shall be the single State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all programs of and grants to the State by the United States Fire Administration, Federal Emergency Management Agency. In respect to such programs and grants, the ~~State Fire~~ Commission shall have authority to review, approve and maintain general oversight to the State plan and its implementation, including subgrants and allocations to local units of government and local fire prevention and control and rescue agencies.

All actions taken by the ~~State Fire~~ Commission in the performance of its duties shall be implemented and administered by the Department ~~of Insurance~~.

(c) Meetings. - The ~~State Fire~~ Commission shall meet quarterly. ~~Five~~ Seven members shall constitute a quorum. All meetings shall be open to the public.

"§ 58-27.33. *State Fire and Rescue Commission; staff.*

(a) There shall be an executive director nominated by the ~~State Fire~~ Commission with direct responsibilities to the Commission, who shall be appointed by the Commissioner ~~of Insurance~~.

(b) Personnel of the Department ~~of Insurance~~ shall serve as staff to the ~~State Fire~~ Commission. The Department ~~of Insurance~~ shall provide the clerical and professional services required by the ~~State Fire~~ Commission and, at the direction of the ~~State Fire~~ Commission, shall develop and administer the State Master Plan for Fire Prevention and Control, the State Fire Education and Training Plan, the Rescue Training Plan, the State Master Plan for Rescue Services, and any additional related programs as may be established by, or assigned to, the ~~State Fire~~ Commission.

"§ 58-27.34. *State Fire and Rescue Commission - Fiscal affairs.*

All funds for the operation of the ~~State Fire~~ Commission and its staff shall be appropriated to the Department ~~of Insurance~~. All such funds shall be held in a separate or special account on the books of the Department ~~of Insurance~~ with a separate financial designation or code number to be assigned by the Department of Administration or

its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as expenditures of any other Department ~~of Insurance~~ funds. The Department ~~of Insurance~~ may hire such additional personnel as may be necessary to handle the work of the ~~State Fire~~ Commission, within the limits of funds appropriated to it by the State and made available to it by the federal government."

Sec. 2. The members of the State Fire Commission serving on the effective date of Section 1 of this act shall complete their terms as members of the State Fire and Rescue Commission, and any vacancies shall be filled for the remainder of the current term of that member. All rules and regulations of the State Fire Commission in effect on the effective date of Section 1 of this act shall remain in effect as rules and regulations of the State Fire and Rescue Commission unless changed in accordance with those rules and regulations and applicable law by the State Fire and Rescue Commission. Officers of the State Fire Commission serving on the effective date of Section 1 of this act shall continue in office as officers of the State Fire and Rescue Commission in accordance with the rules and regulations in effect on the effective date of Section 1 of this act or as changed by the State Fire and Rescue Commission after the effective date.

Sec. 3. G.S. 95-148 reads as rewritten:

"*§ 95-148. Safety and health programs of State agencies and local governments.*

It shall be the responsibility of each administrative department, commission, board, division or other agency of the State and of counties, cities, towns and subdivisions of government to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards and regulations promulgated under this Article. The head of each agency shall:

(1) Provide safe and healthful places and conditions of employment, consistent with the standards and regulations promulgated by this Article;

(2) Acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) Consult with and encourage employees to cooperate in achieving safe and healthful working conditions;

(4) Keep adequate records of all occupational accidents and illnesses for proper evaluation and corrective action;

(5) Consult with the Commissioner as to the adequacy as to form and content of records kept pursuant to this section;

(6) Make an annual report to the Commissioner with respect to occupational accidents and injuries and the agency's program under this section.

The Commissioner shall transmit annually to the Governor and the General Assembly a report of the activities of the State agency and instrumentalities under this section. If the Commissioner has reason to believe that any local government program or program of any agency of the State is ineffective, he shall, after unsuccessfully seeking by negotiations to abate such failure, include this in his annual report to the Governor and the General Assembly, together with the reasons therefor, and may recommend legislation intended to correct such condition.

The Commissioner shall have access to the records and reports kept and filed by State agencies and instrumentalities pursuant to this section unless such records and reports are required to be kept secret in the interest of national defense, in which case the Commissioner shall have access to such information as will not jeopardize national defense.

The Commissioner will not impose civil or criminal penalties against any State agency or political subdivision for violations described and covered by this Article.

Employees of any agency or department covered under this section are afforded the same rights and protections as granted employees in the private sector.

This section shall not apply to volunteer fire departments not a part of any municipality.

Any municipality with a population of 10,000 or less may exclude its fire department from the operation of this section by a resolution of the governing body of the municipality, except that the resolution may not exclude those firefighters who are employees of the municipality.

The North Carolina Fire and Rescue Commission shall recommend regulations and standards for fire departments."

Sec. 4. G.S. 120-123(9) reads as rewritten:

"(9) The State Fire and Rescue Commission, as established by G.S. 58-27.30."

Sec. 4.1. This act does not obligate the General Assembly to appropriate any additional funds.

Sec. 5. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 9th day of August, 1989.

H.B. 281 **CHAPTER 751**

AN ACT TO CHANGE THE NAME OF THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, TO PROVIDE FOR A DIVISION OF HOUSING IN THE DEPARTMENT OF

ECONOMIC AND COMMUNITY DEVELOPMENT, TO PROVIDE FOR A TOLL-FREE TELEPHONE NUMBER FOR HOUSING ASSISTANCE INFORMATION WITHIN THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, AND TO MAKE TECHNICAL AND CONFORMING AMENDMENTS TO VARIOUS LAWS.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 143B of the General Statutes is amended by deleting the existing title and substituting *"Department of Economic and Community Development"*.

Sec. 2. G.S. 143B-431, as amended by Section 25 of Chapter 76 of the 1989 Session Laws, reads as rewritten:

"§ 143B-431. Department of ~~Commerce~~ Economic and Community Development -- functions.

(a) The functions of the Department of ~~Commerce~~ Economic and Community Development, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to economic development including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the promotion of and assistance in the orderly development of North Carolina counties and communities, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in any agency enumerated in Article 15 of Chapter 143A, to wit:

a. The State Board of Alcoholic Control.
b. The North Carolina Utilities Commission.
c. The Employment Security Commission,
d. The North Carolina Industrial Commission,
e. State Banking Commission and the Commissioner of Banks.
f. Savings and Loan Association Division.
g. The State Savings Institutions Commission,
h. Credit Union Commission.
i. The North Carolina Milk Commission.
j. The North Carolina Mutual Burial Association Commission.
k. The North Carolina Rural Electrification Authority.

l. The North Carolina State Ports Authority, all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of ~~Commerce~~ Economic and Community Development; and,

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of ~~Commerce~~ Economic and Community Development by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of ~~Commerce~~ Economic and Community Development in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article.

(b) The Department of ~~Commerce~~ Economic and Community Development is authorized to establish and provide for the operation of North Carolina nonprofit corporations to achieve the purpose of aiding the development of small businesses and to achieve the purposes of the United States Small Business Administration's 504 Certified Development Company Program.

(c) The Department of Economic and Community Development shall have the following powers and duties with respect to local planning assistance:

(1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.

(2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.

(3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.

(4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.

(5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.

(6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities."

Sec. 3. The Secretary of Economic and Community Development shall establish the functions of community development and housing within the Department of Economic and Community Development and shall establish the position of Deputy or Assistant Secretary for Community Development and Housing within the Department, which Deputy or Assistant Secretary shall be of the same status and position as the Deputy or Assistant Secretary for Economic Development. The functions of the Division of Community Assistance as transferred by this act shall be located under the Deputy or Assistant Secretary for Community Development and Housing.

Sec. 4. Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 1A.

"Housing Coordination and Policy Council.

"*§ 143B-433.1. Housing Coordination and Policy Council; creation; duties.*

(a) There is created the Housing Coordination and Policy Council of the Department of Economic and Community Development. The Housing Coordination and Policy Council shall have the following functions and duties:

(1) To advise the Secretary of Economic and Community Development and the Deputy Secretary of Community Development and Housing regarding the coordination of various public and private low and moderate income housing programs;

(2) To advise the Secretary of Economic and Community Development and the Deputy Secretary of Community Development and Housing in the preparation of an overall, comprehensive State housing plan with specific recommendations to address identified areas of need, which report shall be presented to the Governor and General Assembly;

(3) To advise the Secretary of Economic and Community Development and the Deputy Secretary of Community Development and Housing with respect to the best use of housing resources under the Deputy Secretary; and

(4) To advise the Secretary of Economic and Community Development regarding any other matter relating to housing the Secretary may refer to it.

(b) Nothing herein shall abrogate the existing statutory responsibility of any other agency to develop housing plans and policies relating to specific housing programs.

"*§ 143B-433.2. Council membership; compensation; procedures.*

(a) The Housing Coordination and Policy Council shall consist of 15 representatives, as follows:

(1) Two members of the N.C. Housing Partnership who are experienced with housing programs for low-income persons, as designated by the chairman.

(2) Two members of the Community Development Council who are experienced with federal, state and local housing programs, as designated by the chairman.

(3) Two members of the N.C. Housing Finance Agency Board of Directors who are experienced with real estate finance and development, as designated by the chairman.

(4) One member of the Weatherization Policy Advisory Council who is experienced with community weatherization programs, as designated by the chairman.

(5) One member of the Governor's Advocacy Council for Persons with Disabilities who is familiar with the housing needs of the disabled.

(6) The executive director of the Commission of Indian Affairs, or a designee familiar with Indian housing programs.

(7) The Deputy Secretary or Assistant Secretary of Community Development and Housing, or a designee familiar with

housing programs related to community development and housing functions.

(8) The assistant secretary of the Division of Aging, or a designee familiar with the housing programs of the division.

(9) The executive director of the N.C. Housing Finance Agency, or a designee familiar with the housing programs of the agency.

(10) The director of the Division of Mental Health or a designee familiar with housing for those with mental disabilities.

(11) The executive director of the N.C. Human Relations Council or a designee familiar with federal and state fair housing laws.

(12) A chairman designated by the Secretary of Economic and Community Development.

(b) All members except those serving ex officio shall be appointed by the Secretary of Economic and Community Development. The Secretary of Economic and Community Development shall designate one member of the Council to serve as Chair.

(c) The initial members of the Council other than those serving ex officio shall be appointed to serve for terms of four years and until their successors are appointed and qualified. Any appointment to fill a vacancy created by resignation, dismissal, death, or disability of a member shall be for the balance of the term.

(d) Members of the Council may receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) A majority of the Council shall constitute a quorum for the transaction of business.

(f) All clerical and other services required by the Council shall be supplied by the Secretary of Economic and Community Development.

"*§ 143B-433.3. Council meetings; report.*

(a) The Housing Coordination and Policy Council shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the Chair or upon written request of a majority of the members.

(b) The Council shall assist in the preparation and filing of an annual written report which contains a review of work completed, a review of ongoing activities, and housing policy recommendations. This report shall be filed with the General Assembly and the Governor by May 1. The report to the 1991 Session of the General Assembly shall contain specific recommendations regarding the further consolidation of housing programs within State government."

Sec. 5. G.S. 143-323(c) is repealed.

Sec. 6. There shall be established in the Department of Economic and Community Development a toll-free telephone number to provide information on housing assistance to the citizens of the State.

Sec. 7. The phrase "Department of Commerce" is deleted and replaced by the phrase "Department of Economic and Community Development" wherever it occurs in each of the following sections of the General Statutes:

(1) G.S. 20-81.3. Special personalized registration plates.
(2) G.S. 54-109.11. Duties of Administrator.
(3) G.S. 54B-4. Definitions and application of terms.
(4) G.S. 58-27.31. State Fire Commission -- Powers and duties.
(5) G.S. 65-49. The North Carolina Cemetery Commission.
(6) G.S. 105-130.40. Credit for creating jobs in severely distressed county.
(7) G.S. 105-151.17. Credit for creating jobs in severely distressed county.
(8) G.S. 105-228.24A. Income tax credit for supervisory fees.
(9) G.S. 113-28.23. Designation of administering agency powers and responsibilities.
(10) G.S. 113B-11. Powers and authority.
(11) G.S. 114-4.2D. Employment of attorney for Energy Division of Department of Commerce.
(12) G.S. 122E-4. North Carolina Housing Partnership created; compensation; organization.
(13) G.S. 126-5. Employees subject to Chapter; exemptions.
(14) G.S. 130B-6. Organization and administration of the Commission. (as enacted by Section 1 of Chapter 168 of the 1989 Session Laws.)
(15) G.S. 143-166.13. Persons entitled to benefits under Article.
(16) G.S. 143-169.2. Definitions.
(17) G.S. 143A-11. Principal departments.
(18) G.S. 143B-2. Interim applicability of the Executive Organization Act of 1973.
(19) G.S. 143B-6. Principal departments.
(20) G.S. 143B-390. North Carolina Marine Science Council -- membership; terms; rules of procedure; meetings; quorum; expenses.
(21) G.S. 143B-417. North Carolina Internship Council -- creation; powers and duties.
(22) G.S. 143B-426.39. Powers and duties of the State Controller.

(23) G.S. 143B-427. Department of Commerce -- creation.
(24) G.S. 143B-428. Department of Commerce -- declaration of policy.
(25) G.S. 143B-429. Department of Commerce -- duties.
(26) G.S. 143B-430. Secretary of Commerce -- powers and duties.
(27) G.S. 143B-432. Transfers to Department of Commerce.
(28) G.S. 143B-433. Department of Commerce -- organization.
(29) G.S. 143B-434. Economic Development Board -- creation, duties, membership.
(30) G.S. 143B-435. Publications.
(31) G.S. 143B-436. Advertising of State Resources and Advantages.
(32) G.S. 143B-437. Investigation of impact of proposed new and expanding industry.
(33) G.S. 143B-437.1. Community Development Council -- creation; powers and duties. (as amended by Sections 199 and 200 of Chapter 727 of the 1989 Session Laws.)
(34) G.S. 143B-437.2. Community Development Council -- members; chairman; selection; removal; compensation; quorum; services. (as amended by Sections 199 and 201 of Chapter 727 of the 1989 Session Laws.)
(35) G.S. 143B-438.4. Coordinating Council. (as amended by Sections 202 and 203 of Chapter 727 of the 1989 Session Laws.)
(36) G.S. 143B-439. Credit Union Commission.
(37) G.S. 143B-443. Administration by Department of Commerce.
(38) G.S. 143B-448. Energy Division.
(39) G.S. 143B-450. Reporting of stocks of coal and petroleum fuels.
(40) G.S. 143B-450.1. Authority to collect data; administration and enforcement; confidentiality.
(41) G.S. 143B-471. Creation of Technological Development Authority.
(42) G.S. 143B-475. Department of Crime Control and Public Safety -- functions.
(43) G.S. 147-69.1. Investments authorized for General Fund and Highway Fund assets.
(44) G.S. 150B-1. Policy and scope.
(45) G.S. 150B-38. Scope; hearing required; notice; venue.
(46) G.S. 159-30. Investment of idle funds.
(47) G.S..159C-4. Creation of Authorities.
(48) G.S. 159C-7. Approval of project.

(49) G.S. 159C-8. Approval of bonds.
(50) G.S. 159D-4. Creation of the Authority.
(51) G.S. 159D-7. Approval of project.
(52) G.S. 159D-8. Approval of bonds.

Sec. 8. The phrase "Secretary of Commerce" and the phrase "Secretary of the Department of Commerce" are deleted and replaced by the phrase "Secretary of Economic and Community Development" wherever they occur in each of the following sections of the General Statutes:

(1) G.S. 20-81. Official license plates.
(2) G.S. 54B-53. Savings and Loan Commission.
(3) G.S. 54B-238. Examination and certification by Secretary of Commerce.
(4) G.S. 54B-240. Proposed amendments submitted to Secretary of Commerce.
(5) G.S. 54B-241. Examination and certification of amendments.
(6) G.S. 54B-246. Supervision by Secretary of Commerce.
(7) G.S. 54B-247. Special examinations.
(8) G.S. 54B-248. Right to enter and to conduct investigations.
(9) G.S. 54B-249. Removal of officers or employees.
(10) G.S. 105-130.40. Credit for creating jobs in severely distressed county.
(11) G.S. 105-151.17. Credit for creating jobs in severely distressed county.
(11a) G.S. 113-28.23. Designation of administering agency powers and responsibilities.
(12) G.S. 113-315.25. Creation of N.C. Seafood Industrial Park Authority.
(13) G.S. 113-315.26. Personnel.
(14) G.S. 113-315.34. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police.
(14a) G.S. 113A-105, Coastal Resources Advisory Council.
(15) G.S. 113B-3. Composition of Council; appointments; terms of members; qualifications.
(16) G.S. 130B-6. Organization and administration of the Commission. (as enacted by Section 1 of Chapter 168 of the 1989 Session Laws.)
(16a) G.S. 143B-285.12. Creation; membership; terms; chairperson; vacancies; removal; compensation; quorum.

(17) G.S. 143B-426.31. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.

(18) G.S. 143B-430. Secretary of Commerce -- powers and duties.

(19) G.S. 143B-437.1. Community Development Council -- creation; powers and duties. (as amended by Sections 199 and 200 of Chapter 727 of the 1989 Session Laws.)

(20) G.S. 143B-437.2. Community Development Council -- members; chairman; selection; removal; compensation; quorum; services. (as amended by Sections 199 and 201 of Chapter 727 of the 1989 Session Laws.)

(21) G.S. 143B-438.4. Coordinating Council. (as amended by Sections 202 and 203 of Chapter 727 of the 1989 Session Laws.)

(22) G.S. 143B-439. Credit Union Commission.

(23) G.S. 143B-449. Organization of Energy Division.

(24) G.S. 143B-451. Navigation and pilotage commissions.

(25) G.S. 143B-452. Creation of Authority -- membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.

(26) G.S. 146-45. Distribution of copies of State publications.

(27) G.S. 147-33.11. Membership of North Carolina Housing Commission.

(28) G.S. 147-45. Distribution of copies of State publications.

(29) G.S. 159C-7. Approval of project.

(30) G.S. 159D-7. Approval of project.

Sec. 9. (a) References in the Session Laws to any department, division, or other agency which is transferred by this act shall be deemed to refer to the successor department, division, or other agency. Every Session Law which refers to any department, division, or other agency to which this act applies or which relates to any power, duty, function, or obligation of any such department, division or agency and which continues in effect after this act becomes effective shall be construed so as to be consistent with this act.

(b) The Revisor of Statutes is authorized to correct any reference or citation in the General Statutes to any portion of the General Statutes which is recodified, transferred, subdivided, or amended by this act by deleting incorrect references and substituting correct references.

(c) The Revisor of Statutes is authorized to delete any reference to the Department of Commerce, the Secretary of Commerce, the Department of Natural Resources and Community Development, the Secretary of Natural Resources and Community Development, the

Department of Human Resources, the Secretary of Human Resources, or their predecessors in any portion of the General Statutes to which conforming amendments are not made by this act and to substitute, as appropriate and consistent with this act, any of the following phrases: Department of Economic and Community Development or Secretary of Economic and Community Development.

Sec. 10. All statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of any agency which is transferred pursuant to this act shall be transferred in their entirety. Any transfer affecting any agency to which this act applies which is not authorized by this act or by Chapter 727 of the 1989 Session Laws, including any transfer under subdivision (10) of Section 5 of Article III of the Constitution of North Carolina, is hereby specifically disapproved and is void.

Sec. 11. Section 1 of Chapter 379 of the 1989 Session Laws reads as rewritten:

"Section 1. G.S. 121-4 is amended by adding a new subdivision to read:

'(15) To encourage and develop, in cooperation with the Department of Administration and in consultation with the Department of Transportation, the Department of Economic and Community Development, the Department of Environment, Health, and Natural Resources, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, and the Historic Preservation Foundation of North Carolina, Inc., a central clearinghouse for information on historic preservation for the benefit and use of public and private agencies and persons in North Carolina.'"

Sec. 12. Section 10 of Chapter 727 of the 1989 Session Laws is repealed.

Sec. 13. The amendments made by Sections 136 and 137 of Chapter 727 of the 1989 Session Laws to G.S. 113A-134.2 and G.S. 113A-134.3 shall be made to those sections of the General Statutes as recodified by Section 2 of Chapter 344 of the 1989 Session Laws.

Sec. 14. Section 169 of Chapter 727 of the 1989 Session Laws is rewritten to read:

"Sec. 169. Section 8 of Chapter 523 of the 1989 Session Laws is rewritten to read:

'Sec. 8. G.S. 143-345.6 is amended by adding a new subsection to read:

"(d1) The Department of Environment, Health, and Natural Resources shall make comparative salary studies periodically of all registers of deeds offices and at the conclusion of each study the

Secretary of Environment, Health, and Natural Resources shall present his written findings and shall make recommendations to the board of county commissioners and register of deeds of each county."'"

Sec. 15. G.S. 130A-131 as enacted by Chapter 333 of the 1989 Session Laws is recodified as G.S. 130A-131.5.

Sec. 16. Subdivision (84) and Subdivision (118) of Section 218 of Chapter 727 of the 1989 Session Laws are repealed.

Sec. 17. Section 226 of Chapter 727 of the 1989 Session Laws reads as rewritten:

"Sec. 226. The provisions of G.S. ~~150B-(c)(2),~~ 150B-59(c)(2), as amended by Section 2 of Chapter 538 of the 1989 Session Laws, shall apply to any agency which is a part of the Department of Human Resources on 30 June 1989, even though such agency is subsequently transferred to the Department of Environment, Health, and Natural Resources or to any other department."

Sec. 18. G.S. 143-169.2(b), as enacted by Section 3 of Chapter 715 of the 1989 Session Laws, reads as rewritten:

"(b) For the purposes of this Article, the term 'agency' shall mean and include, as the context may require, State department, institution, university, commission, committee, board, licensing board, division, bureau, officer or official; provided, however, the provisions of G.S. 143-169.1 shall not apply to the General Assembly, the Department of Revenue, the Department of ~~Commerce,~~ Economic and Community Development, or to the Administrative Office of the Courts and the court system, nor shall the provisions of G.S. 143-170.2 and 143-170.3 apply to the General Assembly or to the Administrative Office of the Courts and the courts system."

Sec. 19. G.S. 143B-390(a) reads as rewritten:

"(a) The Council shall consist of 28 members appointed as follows:

(1) Eighteen members shall be appointed by the Governor from the public and private academic and scientific institutions in the State and from the various industries and professions in the State concerned with the exploration and use of the ocean and marine resources. These members shall serve four-year terms. The terms shall be staggered so that nine terms begin July 1 of each odd-numbered year.

(2) Three at-large members shall be appointed by the Governor. These members shall serve four-year terms. The terms shall be staggered so that one term begins July 1, 1987, and two terms begin July 1, 1989.

(3) Three members shall be the chairpersons of the North Carolina Marine Resources Centers' local advisory

committees. These members shall serve during their tenures as chairmen.

(4) One member representing the Department of ~~Commerce~~ Economic and Community Development in the area of ports and waterways shall be appointed by and serve at the pleasure of the Secretary of ~~the Department of Commerce.~~ Economic and Community Development.

(5) Two members representing the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources in the area of coastal resources and environmental protection shall be appointed by and serve at the pleasure of the Secretary of ~~the Department of Natural Resources and Community Development.~~ Environment, Health, and Natural Resources.

(6) One member representing the Department of Human Resources in the area of health services shall be appointed by and serve at the pleasure of the Secretary of the Department of Human Resources."

Sec. 20. The citation in the introductory line of Section 191 of Chapter 727 of the 1989 Session Laws is amended to read "G.S. 143B-285.12(a)".

Sec. 21. The provisions of G.S. 150B-59(c)(2), as amended by Section 2 of Chapter 538 of the 1989 Session Laws, shall apply to any agency which is a part of the Department of Human Resources on 30 June 1989, even though such agency is subsequently transferred to the Department of Economic and Community Development or to any other department.

Sec. 22. Every act of any department, agency, or officer to which this act applies which occurred prior to the date this act is ratified and which is otherwise valid continues to be valid and effective notwithstanding any change in name or transfer of such department, agency, or officer.

Sec. 23. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each department and agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that department or agency.

Sec. 24. This act shall become effective 1 July 1989.

In the General Assembly read three times and ratified this the 9th day of August, 1989.

S.B. 44 CHAPTER 752

AN ACT TO MAKE EXPANSION BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

Requested by: Senator Royall, Representative Diamont

-----INTRODUCTION

Section 1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

Requested by: Senator Royall, Representative Diamont

-----TITLE OF ACT

Sec. 2. This act shall be known as "The Expansion Budget Appropriations Act of 1989."

*****

An outline of the provisions of the act follows this section. The outline shows the heading "-----CONTENTS/INDEX-----" and it lists by general category the descriptive captions for the various sections and groups of sections that make up the act.

-----CONTENTS/INDEX-----

(This outline is designed for reference only, and the outline and the corresponding entries throughout the act in no way limit, define, or prescribe the scope or application of the text of the act.)

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PART I.-----CURRENT OPERATIONS/GENERAL FUND

Sec. 3. Appropriations from the General Fund of the State for the operations and maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, except for aid to certain governmental and nongovernmental units, are made for the biennium ending June 30, 1991, according to the following schedule:

Current Operations - General Fund	1989-90	1990-91
General Assembly	$ 866,327	$ 467,455
Department of Secretary of State	259,101	276,222
Department of State Auditor	359,005	336,295
Department of State Treasurer	431,100	579,754
Department of Public Education	73,868,503	180,381,325

Department of Justice	1,984,288	2,185,905
Department of Insurance	168,216	265,311
Department of Administration	1,490,445	1,486,068
Department of Agriculture	1,402,836	1,918,637
Department of Labor	1,194,639	791,867
Department of Natural Resources and Community Development	2,603,610	2,913,581
Department of Human Resources		
01. DHR-Administration and Support Program	200,000	50,000
02. Division of Health Service	1,226,625	1,322,210
03. Social Services	3,440,420	6,750,543
04. Medical Assistance	7,154,259	15,330,389
05. Division of Services for the Blind	26,970	53,940
06. Cherry Hospital	1,065,376	1,420,502
07. Division of Facility Services	535,086	394,483
08. Division of Vocational Rehabilitation	-	677,754
Total Department of Human Resources	13,648,736	25,999,821
Department of Correction	9,326,508	24,322,698
Department of Commerce	(790,569)	(3,278,951)
Department of Revenue	5,091,431	3,047,331
Department of Cultural Resources	209,987	198,253
Department of Crime Control and Public Safety	1,470,045	1,389,453
University of North Carolina-Board of Governors		
01. University Operations-Lump Sum	(105,791)	7,638,328

02. Related Educational Programs	2,015,000	3,340,000
03. N.C. State University	(370,000)	(316,000)
04. UNC - Chapel Hill		
a. Health Affairs	(164,280)	(164,280)
b. Academic Affairs	(205,720)	(205,720)
05. University of North Carolina Hospitals at Chapel Hill	(250,000)	(250,000)
06. North Carolina School of Science and Mathematics	201,000	302,000
Total University of North Carolina	1,120,209	10,344,328
Department of Community Colleges	13,336,189	11,131,540
Reserve for Employee Health Plan	30,000,000	40,000,000
Reserve for State Employees and Teachers Salary Increases	292,300,000	611,900,000
GRAND TOTAL CURRENT OPERATIONS-- GENERAL FUND	$ 450,340,606	$ 916,656,893

PART II.-----CURRENT OPERATIONS/HIGHWAY FUND

Sec. 4. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, except for aid to certain governmental and nongovernmental units, are made for the biennium ending June 30, 1991, according to the following schedule:

Current Operations-Highway Fund	1989-90	1990-91
Department of Transportation		
01. Administration	$ 929,575	$ 1,729,634
02. Highways		
a. Administration and Operations	1,004,595	924,216
b. State Construction		
(01) Special Appropriation for Highways	6,000,000	6,000,000
(02) Spot Safety Improvements	2,900,000	2,900,000
c. State Maintenance		

(01) Contract Resurfacing	-	(11,000,000)
d. Ferry Operations	1,711,200	2,235,654
03. Division of Motor Vehicles	4,000,971	3,200,229
04. Governor's Highway Safety Program	6,000	6,000
05. Reserve to Correct Occupational Safety and Health Conditions	200,000	150,000
Total Department of Transportation	16,752,341	6,145,733
Appropriations to Other State Agencies		
01. Department of Revenue	160,000	160,000
02. Department of Crime Control & Public Safety	1,372,095	2,378,827
Reserve for Hospital/Medical Benefit	3,000,000	3,500,000
Reserve for Compensation Increase	17,300,000	36,200,000
GRAND TOTAL CURRENT OPERATIONS--HIGHWAY FUND	$ 38,584,436	$ 48,384,560

PART III.-----CURRENT OPERATIONS/GENERAL FUND/AID TO CERTAIN GOVERNMENTAL AND NONGOVERNMENTAL UNITS

Sec. 5. Appropriations from the General Fund of the State to State departments, institutions, and agencies for aid to certain governmental and nongovernmental units as enumerated are made for the biennium ending June 30, 1991, according to the following schedule:

General Fund	1989-90	1990-91
Department of Public Education	$ 2,000,000	$ 4,000,000
Department of Administration	443,000	595,500
Department of Transportation		
01. Aeronautics	355,000	855,000
02. Aid to Railroads	500,000	-
Total Department of Transportation	855,000	855,000
Department of Natural Resources		

and Community Development	1,000,000	2,064,826
Department of Commerce		
01. Biotechnology Center	-	2,000,000
Department of Human Resources		
01. Division of Aging	3,869,437	5,024,337
02. Division of Health Services	400,000	300,000
03. Social Services	2,650,000	3,593,783
04. Division of Mental Health, Mental Retardation, and Substance Abuse Services	11,688,438	16,690,845
05. Division of Youth Services	197,250	197,250
06. DHR - Administration	90,000	50,000
Total Department of Human Resources	18,895,125	25,856,215
Department of Crime Control and Public Safety	75,000	-
Department of Cultural Resources	-	100,000
Office of State Budget and Management	240,000	-
University of North Carolina-Board of Governors		
01. Related Educational Programs	2,649,431	2,649,431
State Board of Elections	481,555	-
Reserve for Salary Increases for Mandated Local Programs	6,002,988	12,246,094
GRAND TOTAL STATE AID--GENERAL FUND	$ 32,642,099	$ 50,367,066

PART IV.-----CURRENT OPERATIONS/HIGHWAY FUND/AID TO CERTAIN GOVERNMENTAL AND NONGOVERNMENTAL UNITS

Sec. 6. Appropriations from the Highway Fund of the State to State departments, institutions, and agencies for aid to certain governmental and nongovernmental units as enumerated are made for the biennium ending June 30, 1991, according to the following schedule:

Highway Fund	1989-90	1990-91
State Aid for Public Transportation	$ 2,000,000	$ 2,000,000
GRAND TOTAL STATE AID--HIGHWAY FUND	$ 2,000,000	$ 2,000,000

PART V.-----APPROPRIATIONS OF BLOCK GRANT FUNDS

Requested by: Senator Royall, Representative Diamont

-----BLOCK GRANT PROVISIONS

Sec. 7. (a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 1990, according to the following schedule:

JOB TRAINING PARTNERSHIP ACT

01. Title II A funds to the 27 service delivery areas to train economically disadvantaged youth and adults	$21,537,460
02. Education set aside to State education agencies for projects to serve eligible participants	2,208,970
03. Incentive grants and technical assistance funds to service delivery areas	1,656,728
04. Funds for training economically disadvantaged older workers	828,364
05. Funds to the Department of Natural Resources and Community Development to administer and audit all activities related to the Job Training Partnership Act Programs	1,380,606
06. Title II B Summer Youth Employment and Training funds to service delivery areas for economically disadvantaged youth	10,903,115
07. Title III Dislocated workers funds	

to the Employment Security Commission	2,318,402
TOTAL JOB TRAINING PARTNERSHIP ACT	$40,833,645
COMMUNITY SERVICES BLOCK GRANT	
01. Community Action Agencies	$ 7,815,918
02. Limited Purpose Agencies	434,218
03. Department of Natural Resources and Community Development to administer and monitor the activities of the Community Services Block Grant	434,218
TOTAL COMMUNITY SERVICES BLOCK GRANT	$ 8,684,354
COMMUNITY DEVELOPMENT BLOCK GRANT	
01. State Administration	$ 858,080
02. Urgent Needs/Contingency	1,852,296
03. Development Planning Housing	1,111,378
04. Economic Development	7,409,184
05. Community Revitalization	26,673,062
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT	$37,904,000
EDUCATION CONSOLIDATION AND IMPROVEMENT BLOCK GRANT	$11,526,834
PREVENTIVE HEALTH BLOCK GRANT	
01. Emergency Medical Services	$ 424,828
02. Basic Public Health Services	891,309
03. Hypertension Programs	552,640

04. Health Education/Risk Reduction Programs	483,131
05. Health Promotion/Local Health Departments	459,461
06. Fluoridation of Water Supplies	148,063
07. Rape Prevention and Rape Crisis Programs	89,369
08. AIDS/HIV Education, Counseling, and Testing	294,374
TOTAL PREVENTIVE HEALTH BLOCK GRANT	$ 3,343,175
MATERNAL AND CHILD HEALTH SERVICES	
01. Healthy Mother/Healthy Children Block Grants to Local Health Departments	$11,718,781
02. High Risk Maternity Clinic Services, Perinatal Education, and Consultation to Local Health Departments and Other Health Care Providers	1,275,498
03. Services to Disabled Children	4,056,661
04. Sudden Infant Death Syndrome	32,633
05. Lead-Based Paint Poisoning	71,200
06. New Special Projects	606,740
07. Reimbursements for Local Health Departments for Contracted Nutritional Services	120,530
TOTAL MATERNAL AND CHILD HEALTH SERVICES	$17,882,043
SOCIAL SERVICES BLOCK GRANT	
01. County Departments of Social Services	$41,603,354

02. Division of Mental Health, Mental Retardation, and Substance Abuse	5,770,693
03. Division of Services for the Blind	2,691,673
04. Division of Youth Services	1,051,428
05. Division of Facility Services	224,299
06. Division of Aging	327,424
07. Day Care Services	12,517,760
08. Volunteer Services	44,970
09. State Administration and State Level Contracts	3,362,775
10. Voluntary Sterilization funds	100,000
11. Transfer to Maternal and Child Health Block Grant	1,691,909
12. Adult Day Care Services	653,910
13. County Departments of Social Services for Child Abuse/Prevention and Permanency Planning	400,000
14. Allocation to Division of Health Services for Grants in Aid to Prevention Programs	445,000
15. Transfer to Preventive Health Block Grant for Health Promotion Programs	459,461
16. Allocation to Preventive Health Block Grant for AIDS Education	294,374
TOTAL SOCIAL SERVICES BLOCK GRANT	$71,639,030

LOW INCOME ENERGY BLOCK GRANT

01. Energy Assistance Programs	$17,923,064

02.	Crisis Intervention	4,362,032
03.	Administration	1,933,215
04.	Weatherization Program	1,737,187
05.	Indian Affairs	27,222
06.	Emergency Medical Services	209,116
07.	Transfer to Social Services Block Grant for Adult Day Care Services	410,139
08.	Transfer to Social Services Block Grant for State Administration & Contract Service	192,748
09.	Transfer to Maternal and Child Health Grant for Maternal and Child Health Block Grant in the Division of Health Services for Healthy Mothers and Children	1,696,362
10.	Allocation to the Department of Administration for the North Carolina Fund for Children	45,270

TOTAL LOW INCOME ENERGY BLOCK GRANT $28,536,355

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANT

01.	Funds to Area Mental Health, Mental Retardation, and Substance Abuse Programs to Be Distributed on a Per Capita Basis	$1,866,556
02.	Services to Persons Who Have Aged Out of the Willie M. Class	300,000
03.	Programs for the Chronically Mentally Ill	3,084,847

04. Community-Based Substance Abuse Programs	4,743,447
05. Administration	712,213
06. Non-Residential Child Mental Health Services	279,781
07. Residential Child Mental Health Services	341,418
08. Treatment Alternatives to Street Crimes	232,371
09. Eastern Region Detox Services	353,110
10. Community-Based Services for Youth Substance Abusers	1,962,191
TOTAL ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANT	$13,875,934

ALCOHOL AND DRUG ABUSE TREATMENT AND REHABILITATION BLOCK GRANT

01. Community-based Services for Youth Substance Abusers	$ 968,673
02. Treatment Alternatives to Street Crimes	114,733
TOTAL ALCOHOL AND DRUG ABUSE TREATMENT AND REHABILITATION BLOCK GRANT	$1,083,406

MENTAL HEALTH SERVICES FOR THE HOMELESS BLOCK GRANT

01. Specialized Community Services for the Chronically Mentally Ill	$215,588
02. Community-based Services for Chronically Mentally Ill Youth	75,195
TOTAL MENTAL HEALTH SERVICES FOR THE HOMELESS BLOCK GRANT	$290,783

COMMUNITY YOUTH ACTIVITY PROGRAM BLOCK GRANT

01. Development of Community-Based Substance Abuse Prevention Programs for Youth	$61,709
02. Evaluation	6,800
TOTAL COMMUNITY YOUTH ACTIVITY PROGRAM BLOCK GRANT	$68,509

(b) Decreases in Federal Fund Availability

If federal funds are reduced below the amounts specified above after the effective date of this act, then every program, in each of the federal block grants listed above, shall be reduced by the same percentage as the reduction in federal funds. If federal funds are reduced in the Education Consolidation and Improvement Act Chapter II Block Grant, then the State Board of Education shall determine how reductions are to be made among the various local agencies.

(c) Increases in Federal Fund Availability

If the United States Congress appropriates additional funds for block grants after the effective date of this act, these funds shall be held in a reserve in each block grant for future allocations by the General Assembly. This subsection shall not apply to the Community Development Block Grant, the Community Services Block Grant, and to Job Training Partnership Act funds.

(d) Education Setaside of JTPA Funds

The Department of Natural Resources and Community Development shall certify to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office when Job Training Partnership Act funds have been distributed to each agency, the total amount distributed to each agency, and the total amount of eight percent (8%) Education Setaside funds received.

PART VI.-----STATE AID TO NON-STATE ENTITIES/CORRECTIONS PROVISIONS

Requested by: Representative Locks.

-----PEMBROKE LIBRARY RENOVATION FUNDS REDIRECTED FOR MUNICIPAL COMPLEX CONSTRUCTION

Sec. 8. S1742 of Section 1 of Chapter 1094 of the 1987 Session Laws, Regular Session 1988, reads as rewritten:

"S1742 ~~PEMBROKE LIBRARY~~ MUNICIPAL COMPLEX FUNDS

Fifty thousand dollars ($50,000) to the Town of Pembroke in Robeson County for capital costs for ~~the library~~ a municipal complex."

Requested by: Representative Cooper
-----CASTALIA FUNDS REALLOCATED

Sec. 9. Paragraph H2219 of Section 1 of Chapter 1085 of the 1987 Session Laws reads as rewritten:

"H2219 ~~CASTALIA CAPITAL FUNDS~~ CASTALIA VOLUNTEER FIRE DEPARTMENT FUNDS

Seven thousand dollars ($7,000) to the ~~Town of Castalia for capital needs, provided these funds are matched on the basis of one dollar from local ad valorem tax revenues for every two State dollars.~~ Castalia Volunteer Fire Department, Inc., for capital improvements."

Requested by: Representative Beall
-----HAYWOOD CENTER FUNDS

Sec. 10. Of the funds appropriated in Section 115 of Chapter 757 of the 1985 Session Laws to Haywood County for the 1985-86 fiscal year to construct an agricultural center, any unexpended or unencumbered funds, any matching funds, and any interest or investment earnings on these funds may be used by Haywood County for a Student Activities Center at Haywood Community College.

Requested by: Representatives Jeralds, Edwards
-----REALLOCATION OF CERTAIN FUNDS

Sec. 11. Paragraph S1760 of Section 1 of Chapter 1094 of the 1987 Session Laws reads as rewritten:

"S1760 CUMBERLAND CULTURAL FUNDS

~~Fifty thousand dollars ($50,000)~~ Twenty-five thousand dollars ($25,000) to the Howard Improvement Association, Inc., for renovation, improvement, and landscaping of the historic Howard Trust property in Cumberland County, which has been used for cultural, educational, and literary purposes since 1867.

Twenty-five thousand dollars ($25,000) to the Orange Street School Restoration and Historical Association, Inc., to restore and renovate the Old Orange Street School in Fayetteville for use as a museum, art center, or other cultural center.

Forty thousand dollars ($40,000) to the City of Fayetteville to renovate the Market House."

(b) Section 24 of Chapter 1100 of the 1987 Session Laws is repealed.

(c) This section shall become effective June 30, 1989.

Requested by: Representative Jeralds
-----17TH HOUSE DISTRICT SPECIAL FUNDS

Sec. 12. Paragraph H2557 of Section 1 of Chapter 1085 of the 1987 Session Laws, 1988 Regular Session, reads as rewritten:

"H2557 17TH HOUSE DISTRICT SPECIAL FUNDS

Two thousand five hundred dollars ($2,500) to the Cumberland Community Foundation, Inc., in Cumberland County for mini-grants for teacher staff development.

Five thousand dollars ($5,000) to the City of Fayetteville to provide transportation for senior citizens.

Five thousand dollars ($5,000) to the Spring Lake Community Center Foundation, Inc., of Cumberland County for operating expenses.

Two thousand five hundred dollars ($2,500) to the Southeastern Cumberland County Rural Community Association, Inc., for educational programs and playground equipment and repairs.

Two thousand five hundred dollars ($2,500) to the Board of Governors of The University of North Carolina to provide funds for the Continuing Education Center at Fayetteville State University.

Two thousand five hundred dollars ($2,500) to the Town of Spring Lake to be used for transportation and out-reach programs at the Spring Lake Senior Citizens Center.

Two thousand five hundred dollars ($2,500) to the Cumberland Sheltered Workshop, Inc., for operating expenses.

Five thousand dollars ($5,000) to ~~the Howard Improvement Association, Inc., for improvements to the historic Howard Trust property in Cumberland County, which has been used for cultural, educational, and literary purposes since 1867.~~ Teen Involvement Projects (TIPS), a nonprofit corporation, for support of its programs for at-risk youth.

Two thousand five hundred dollars ($2,500) to the Arts Council of Fayetteville/Cumberland County, Inc., for special projects."

Requested by: Representative Jeralds
-----FAYETTEVILLE AREA FUNDS

Sec. 13. Paragraph H2582 of Section 1 of Chapter 1085 of the 1987 Session Laws, 1988 Regular Session, reads as rewritten:

"H2582 FAYETTEVILLE AREA FUNDS

Two thousand five hundred dollars ($2,500) to the Cumberland Community Foundation, Inc., in Cumberland County for mini-grants for teacher staff development.

Five thousand dollars ($5,000) to the City of Fayetteville to provide transportation for senior citizens.

Five thousand dollars ($5,000) to the Spring Lake Community Center Foundation, Inc., of Cumberland County for operating expenses.

One thousand five hundred dollars ($1,500) to the Southeastern Cumberland County Rural Community Association, Inc., for educational programs, playground equipment, and repairs.

Two thousand five hundred dollars ($2,500) to the Board of Governors of The University of North Carolina to provide funds for the Continuing Education Center at Fayetteville State University.

Two thousand five hundred dollars ($2,500) to Spring Lake Lifeline Center, Inc., of Cumberland County for operating expenses.

Two thousand five hundred dollars ($2,500) to the Cumberland Sheltered Workshop, Inc., for operating expenses.

Five thousand dollars ($5,000) to ~~the Howard Improvement Association, Inc., of Cumberland County for capital improvements.~~ Sugar & Spice Day/Night Care for the Elderly in Cumberland County for operating expenses.

Two thousand five hundred dollars ($2,500) to the Arts Council of Fayetteville/Cumberland County, Inc., to be used for special projects.

One thousand dollars ($1,000) to the Sugar & Spice Day/Night Care for the Elderly in Cumberland County for development expenses."

PART VII.-----GENERAL GOVERNMENT PROVISIONS

Requested by: Senator Martin of Guilford, Representatives Easterling, Michaux

-----ALLOCATION OF RAPE CRISIS CENTER FUNDS

Sec. 14. All funds for the Rape Crisis Centers appropriated to the Department of Administration, Council on the Status of Women, for the 1989-90 fiscal year and the 1990-91 fiscal year shall be available to Rape Crisis Centers providing direct services to victims of sexual assault and rape prevention services. Funds shall be awarded according to criteria developed by the Department of Administration. In reviewing grant applications, the Department shall consider the impact of discontinued federal funding on those centers that received funding through Section 41 of Chapter 1086 of the 1987 Session Laws, Regular Session 1988. Grants shall be awarded by September 1 each fiscal year and the funds disbursed no later than November 1 of each fiscal year.

Requested by: Representatives Easterling, Michaux

-----DOMESTIC VIOLENCE CENTER FUNDS

Sec. 15. The funds appropriated to the Department of Administration, Council on the Status of Women, for fiscal years

1989-90 and 1990-91 for domestic violence centers, shall be allocated equally among all of the 61 domestic violence centers in operation on February 1, 1989, that offered services including a hotline, transportation services, community education programs, daytime services, and call forwarding during the night. For the 1989-90 fiscal year, each grant shall be $15,000. For the 1990-91 fiscal year, each grant shall be $17,500.

Requested by: Representative B. Ethridge
-----REGIONAL HISTORIC ATTRACTION FUNDS

Sec. 16. Of the funds appropriated to the Department of Cultural Resources in Section 5 of this act for the 1990-91 fiscal year the sum of $100,000 shall be used for grants of up to $10,000 each to nonprofit historic attractions in North Carolina for operating expenses and other purposes, all as approved by the North Carolina Historical Commission, provided that any grant recipient agrees to match the State grant on a dollar-for-dollar basis, and provided that the expenditure and accounting of these grant funds by the historic attraction adhere to reasonable rules and regulations established by the North Carolina Historical Commission.

Requested by: Representatives Decker, Stam
-----SOUTHEASTERN CENTER FOR CONTEMPORARY ART FUNDS LIMITATION

Sec. 17. Notwithstanding any provisions of law to the contrary, no State funds appropriated or allocated to the Southeastern Center for Contemporary Art, in Winston-Salem, shall be used for the Awards in the Visual Arts (AVA) Program.

Requested by: Representative Michaux
-----LAND LOSS PREVENTION FUNDS

Sec. 18. Of the funds appropriated to the North Carolina Association of Black Lawyers' Land Loss Prevention Project, Inc., in Section 5 of this act, the sum of $100,000 for the 1989-90 fiscal year shall be used to provide free legal representation to low-income, financially distressed small farmers. The North Carolina Association of Black Lawyers' Land Loss Prevention Project, Inc., shall not use these funds to represent farmers who have income and assets that would make them financially ineligible for legal services pursuant to Title 45, Part 1611 of the Code of Federal Regulations. The North Carolina Association of Black Lawyers' Land Loss Prevention Project, Inc., shall report quarterly to the Joint Legislative Commission on Governmental Operations on the use of these funds.

Requested by: Representatives Easterling, Michaux
-----OFFICE OF ADMINISTRATIVE HEARINGS RECEIPTS

Sec. 19. (a) The Office of Administrative Hearings may budget receipts from the sale of publications and may budget the equivalent amount in contractual services for preparation of publications.

(b) The Office of Administrative Hearings may budget federal receipts received by the Civil Rights Division. These funds may be used to cover expenditures such as rent of offices and contractual personal services.

Requested by: Senator Royall, Representative Diamont
-----CONTINGENCY AND EMERGENCY FUND RESERVE/RESTRICTED RESERVE

Sec. 20. G.S. 143-12 reads as rewritten:

"§ *143-12. Bills containing proposed appropriations.*

The Director shall cause to be prepared and submitted to the General Assembly the following bills:

(1) A bill containing all proposed current operations appropriations of the budget for each year in the ensuing biennium, which shall be known as the 'Current Operations Appropriations Bill', and a bill containing all proposed capital appropriations of the budget for each year in the ensuing biennium, which shall be known as the 'Capital Improvement Appropriations Bill'.

(2) If necessary, a bill containing the Director of the Budget's views on revenue for the ensuing biennium, which shall be known as the 'Budget Revenue Bill', and shall provide an amount of revenue for the ensuing biennium sufficient, in the opinion of the Director and the Commission, to meet the appropriations contained in the Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill.

(3) Repealed by Session Law 1983 (Regular Session, 1984), c. 1034, s. 153.

To the end that all expenses of the State may be brought and kept within the budget, the Current Operations Appropriations Bill shall contain a specific sum as a contingent or emergency ~~appropriation.~~ appropriation, and shall allocate a specific portion of that sum to a special reserve to be used solely for purposes as outlined in G.S. 143-23(a1)(3), (4), and (5). The manner of the allocation of such contingent or emergency appropriation shall be as follows: Any institution, department, commission, or other agency or activity of the State, or other activity in which the State is interested, desiring an allotment out of such contingent or emergency appropriation, shall

upon forms prescribed and furnished by the Director of the Budget, present such request in writing to the Director of the Budget, with such information as he may require, and if the Director of the Budget shall approve such request, in whole or in part, he shall forthwith present the same to the Governor and Council of State, and upon their order only shall such allotment be made. If the Director shall disapprove the request of such an allotment out of the emergency or contingent appropriation, he shall transmit his refusal and his reason therefor to the Governor and Council of State for their information.

Funds allocated from the contingent or emergency appropriation may be used only for the purpose for which they were allocated and may not be reallocated for another purpose by the Governor and the Council of State. If the funds are not spent or encumbered for the purpose for which they were allocated by the end of the fiscal biennium and if the Governor and the Council of State do not reallocate them for that same purpose, the funds shall revert to the fund from which the contingent or emergency appropriation was made. Also, if the funds are not needed for the purpose for which they were allocated, the funds shall revert to the fund from which the contingent or emergency appropriation was made.

The Director of the Budget may, in preparation of the Appropriations and Revenue Bills, seek the advice of the Advisory Budget Commission. If the Director and the Commission shall not agree as to the Appropriations and Revenue Bills in substantial particulars, the Director shall prepare the same, based on his conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as they shall find proper to submit as representing their own views."

Requested by: Representative G. Wilson

-----CONTINGENCY AND EMERGENCY FUND RESERVE/OUTDOOR DRAMAS

Sec. 21. (a) G.S. 143-204.8(a) reads as rewritten:

"(a) Upon the application of an outdoor historical drama corporation or trust, approved by the Secretary of Cultural Resources, the Governor and the Council of State may order an allotment from the Contingency and Emergency Fund of the State not to exceed fifteen thousand dollars ($15,000) a year to that outdoor historical drama corporation or trust to aid in the production of an outdoor historical drama if the provisions of subsection (b) of this section are met. ~~drama; provided that if that corporation or trust has received State funds from any source whatsoever, including direct appropriations, during a fiscal year the Governor and the Council of~~

~~State during that year may not order an allotment which, when added to the State funds otherwise received, would exceed fifteen thousand dollars ($15,000). No outdoor historical drama corporation or trust shall, during any one fiscal year, receive both an allotment under this Article from the Contingency and Emergency Fund and one from money appropriated to the Department of Cultural Resources for programs funded by the enactment of House Bill 947 of this Session [Session Laws 1977, Chapter 986].~~"

(b) Funds allocated to the Contingency and Emergency Fund for the 1989-90 fiscal year and the 1990-91 fiscal year and designated for all allocations of the Contingency and Emergency Fund other than emergency allocations shall be used to implement this section.

PART VIII.-----SALARIES AND BENEFITS

Requested by: Senators Royall, Ward, Sands, Representative Diamont

-----BENEFIT AND TECHNICAL ADJUSTMENTS/TEACHERS' AND STATE EMPLOYEES' HEALTH BENEFIT PLAN

Sec. 22. (a) G.S. 135-39.5 reads as rewritten:

"§ *135-39.5. Powers and duties of the Executive Administrator and Board of Trustees.*

The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall have the following powers and duties:

(1) Supervising and monitoring of the Claims Processor.
(2) Providing for enrollment of employees in the Plan.
(3) Communicating with employees enrolled under the Plan.
(4) Communicating with health care providers providing services under the Plan.
(5) Making payments at appropriate intervals to the Claims Processor for benefit costs and administrative costs.
(6) Conducting administrative reviews under G.S. 135-39.7.
(7) Annually assessing the performance of the Claims Processor.
(8) Preparing and submitting to the Governor and the General Assembly cost estimates for the health benefits plan, including those required by Article 15 of Chapter 120 of the General Statutes.
(9) Recommending to the Governor and the General Assembly changes or additions to the health benefits program and health care cost containment programs, together with statements of financial and actuarial effects as required by Article 15 of Chapter 120 of the General Statutes.

(10) Working with State employee groups to improve health benefit programs.

(11) Repealed by Session Laws 1985, c. 732, s. 9.

(12) Determining basis of payments to health care providers, including payments in accordance with G.S. 58-260.6.

(13) Requiring bonding of the Claims Processor in the handling of State funds.

(14) Repealed by Session Laws 1985, c. 732, s. 7.

(15) In case of termination of the contract under G.S. 135-39.5A, to select a new Claims Processor, after competitive bidding procedures approved by the Department of Administration.

(16) Notwithstanding the provisions of Part 3 of this Article, to formulate and implement cost-containment measures which are not in direct conflict with that Part.

(17) Implementing pilot programs necessary to evaluate proposed cost containment measures which are not in direct conflict with Part 3 of this Article, and expending funds necessary for the implementation of such programs.

(18) Authorizing coverage for alternative forms of care not otherwise provided by the Plan in individual cases when medically necessary, medically equivalent to services covered by the Plan, and when such alternatives would be less costly than would have been otherwise.

(19) Establishing and operating a hospital bill audit program and a fraud detection program."

(b) Effective January 1, 1989, G.S. 135-40 reads as rewritten:

"§ *135-40. Undertaking.*

(a) The State of North Carolina undertakes to make available a Comprehensive Major Medical Plan (hereinafter called the 'Plan') ~~to~~ exclusively for the benefit of its employees, retired employees and certain of their dependents which will pay benefits in accordance with the terms hereof. The Plan shall have all the powers and privileges of a corporation and shall be known as the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. The Executive Administrator and Board of Trustees shall carry out their duties and responsibilities as fiduciaries for the Plan.

(b) The Plan benefits will be provided under contracts between the State and the Claims Processor selected by the State. Claims Processor refers to the administrator, third party administrator or other party contracting with the State to administer the Plan benefits. Such contracts shall include the substance of G.S. 135-40.1 through G.S. 135-40.13 and the description of Plan in the request for proposal, and shall be administered by the respective Claims Processor

of the State which will determine benefits and other questions arising thereunder. The contracts necessarily will conform to applicable State laws. If any of the provisions of G.S. 135-40.1 through G.S. 135-40.13 and the request for proposals must be modified for inclusion in the contract because of State laws, such modification will be made.

(c) Payroll deduction shall be available for coverage under this Part or under G.S. 135-39.5B of amounts not paid by the State.

(d) Notwithstanding any other provisions of the Plan, the Executive Administrator and Board of Trustees are specifically authorized to use all appropriate means to secure tax qualification of the Plan under any applicable provisions of the Internal Revenue Code of 1954 as amended. The Executive Administrator and Board of Trustees shall furthermore comply with all applicable provisions of the Internal Revenue Code as amended, to the extent that this compliance is not prohibited by this Article."

(c) G.S. 135-40.1(2) reads as rewritten:

"(2) Deductible. -- Deductible shall mean an amount of covered expenses during a ~~calendar~~ fiscal year which must be incurred after which benefits (subject to the deductible) becomes payable. The deductible for an employee, retired employee and/or his or her dependents shall be one hundred fifty dollars ($150.00) for each ~~calendar~~ fiscal year.

The deductible applies separately to each covered individual in each ~~calendar~~ fiscal year, subject to an aggregate maximum of four hundred fifty dollars ($450.00) per family (employee or retiree and his or her covered dependents) in any ~~calendar~~ fiscal year.

If two or more family members are injured in the same accident only one deductible is required for charges related to that accident during the benefit period."

(d) G.S. 135-40.1(17) reads as rewritten:

"(17) Retired Employee (Retiree). -- Retired teachers, State employees, and members of the General Assembly who are receiving monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State of North Carolina, so long as the retiree is enrolled. On and after January 1, 1988, a ~~retired~~ retiring employee or retiree must have completed at least five years of contributory retirement service with an employing unit prior to retirement from any State-supported retirement system in order to be eligible for

group benefits under this Part as a retired employee or retiree."

(e) G.S. 135-40.2 is amended by adding a new subsection to read:

"(h) No person shall be eligible for coverage as an employee or retired employee or as a dependent of an employee or retired employee upon a finding by the Executive Administrator or Board of Trustees or by a court of competent jurisdiction that the employee or dependent knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan."

(f) Effective September 1, 1987, G.S. 135-40.2(a) reads as rewritten:

"(a) The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-40.3:

(1) All permanent full-time employees of an employing unit who meet the following conditions:
   a. Paid from general or special State funds, or
   b. Paid from non-State funds and in a group for which his or her employing unit has agreed to provide coverage.

   Employees of State agencies, departments, institutions, boards, and commissions not otherwise covered by the Plan who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.

(1a) Permanent hourly employees as defined in G.S. 126-5(c4) who work at least one-half of the workdays of each pay period.

(2) Retired teachers, State employees, and members of the General Assembly.

(2a) Surviving spouses of:
   a. Deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and
   b. Deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986.

(3) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1020, s. 29(b), effective January 1, 1988.

(3a) Employees of the General Assembly, not otherwise covered by this section, as determined by the Legislative Services Commission, except for legislative interns and pages.

(4) Members of the General Assembly."

(g) Effective July 1, 1986, G.S. 135-40.6 is amended in the portion of the section preceding the first subdivision by deleting the phrase "per calendar year" and by substituting the phrase "per fiscal year".

(h) Effective October 1, 1989, G.S. 135-40.6(1) reads as rewritten:

"(1) In-Hospital Benefits. -- The Plan pays in-hospital benefits for each single confinement, when charged by a hospital, for room accommodation, including bed, board and general nursing care, but not to exceed the charge for semiprivate room or ward accommodations, or the rate negotiated for the Plan.

The Plan will pay the following covered charges, when charged by a hospital, for each confinement.

a. Intensive and cardiac nursing care.
b. All recognized drugs and medicines for use in the hospital.
c. Radiation services, including diagnostic x-rays, x-ray therapy, radiation therapy and treatment.
d. Clinical and pathological laboratory examinations.
e. Electrocardiograms and electroencephalograms.
f. Physical therapy.
g. Intravenous solutions.
h. Oxygen and oxygen therapy, plus the use of equipment.
i. Dressings, ordinary splints, plaster casts and sterile supplies.
j. Use of operating, delivery, recovery and treatment rooms and equipment.
k. Routine nursery charges, if the mother is eligible to receive maternity benefits.
l. Anesthetics and the administration thereof by the hospital's employee anesthesiologist.
m. Devices or appliances surgically inserted within the body.
n. Processing and administering of blood and blood plasma.
o. Children ~~who are born under the coverage type (2), (3), or (5), as outlined in G.S. 135-40.3(d), and who remain continuously covered~~ are entitled to benefits for treatment of illnesses or congenital defect, incubation or isolette care, and treatment of prematurity or postmaturity.

   If the mother is a covered individual, benefits are provided for the newborn's circumcision and routine nursery care.
p. When a covered individual is admitted to or transferred to a section of a hospital providing ambulant, convalescent, or

rehabilitative care, benefits are provided up to the average number of days of service for treatment of the particular diagnosis or condition involved, or more if medical necessity requires.

q. The Plan pays benefits for laboratory testing and administration of blood provided to a covered individual.

When a covered individual is the recipient of transplanted organs or bones, benefits are provided for services to the donor which are directly and specifically related to the transplantation.

r. Thirty days per fiscal year are provided for inpatient treatment of mental illness. Readmission for this condition within 365 days of last discharge shall be considered a single confinement. When furnished to a patient in a skilled nursing facility, 30 days less the days of care already provided for the same illness in a hospital are provided. Additional inpatient treatment, based on individual consideration, may be provided if prior approval is obtained from the Claims Processor.

s. The use of nebulizers when authorized as medically necessary by the attending physician."

(i) Effective October 1, 1989, G.S. 135-40.6(2) reads as rewritten:

"(2) Limitations and Exclusions to In-Hospital Benefits. --

a. The services of physicians, surgeons and technicians not employed by or under contract to the hospital are not covered.

b. Any admission for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis, if no hospitalization would have been required except for such diagnostic services is not covered. However, benefits are provided at ninety percent (90%) of Plan benefits for diagnostic tests and procedures consistent with the symptoms or diagnosis for which admitted.

c. The Plan will not cover any admission to a hospital prior to the effective date of coverage or beginning prior to the expiration of any waiting period so long as the individual remains continuously in a hospital.

d. Hospitalization for custodial, domiciliary or sanitarium care, or rest cures, is not covered.

e. Hospitalization for dental care and treatment is not covered, except when a hospital setting is medically necessary.

f. Prior to admission for scheduled inpatient hospitalization ~~and following admission for unscheduled inpatient hospitalization~~, the admitting physician shall contact the Plan and secure approval certification for an inpatient admission, including a

length of stay, based upon clinical criteria established by the medical community, before any in-hospital benefits are allowed under G.S. 135-40.8(a). Effective January 1, 1987, failure to secure certification, or denial of certification, shall result in in-hospital benefits being allowed at the rate maximum amount of out-of-pocket expenses established by G.S. 135-40.8(b). Denial of certification by the Plan shall be made only after contact with the admitting physician and shall be subject to appeal to the Executive Administrator and Board of Trustees."

(j) Effective October 1, 1989, G.S. 135-40.6(5) reads as rewritten:

"(5) Surgical Benefits. -- The Plan pays the usual, customary and reasonable charges for covered surgical services as follows:

a. Surgery: Cutting procedures, treatment of fractures, transfusions, operative preparation for diagnostic x-ray examinations, surgical implantation radiation sources, major endoscopic examinations, biopsies, surgical sterilization, other standard services and operations.

For the purpose of this subdivision, the term 'standard services and operations' includes the following organ transplants: liver, heart, corneal, bone marrow, and kidney. All other organ transplants shall be considered nonreimbursable under the Plan. Benefits for the above listed organ transplants shall be payable only in accordance with rules established by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees may limit the Plan's reimbursement for selected organ transplants to amounts that would otherwise be allowed in accordance with G.S. 135-40.4.

b. Anesthesia: Administration of general, spinal block or local anesthesia. Covered services include pre- and postoperative visits, the administration of the anesthetic, fluids and/or blood provided by the anesthesiologist and incidental to the anesthesia, and necessary drugs and materials provided by the anesthesiologist. No benefits are provided for administration of local anesthesia or for anesthesia administered by the operating surgeon or surgical assistant(s).

c. Oral Surgery: Services which are within the scope of practice of both a doctor of medicine and a dentist, such as excision of tumors and lesions of the mouth, treatment of jaw fractures and surgery to correct injuries of the mouth structure other than teeth and their supporting structure. Developmental and congenital orthognathic surgery procedures will be covered

under the Plan, provided such surgery is medically necessary, is the only method of treatment which will correct the patient's deformity, is not performed for cosmetic reasons, and is approved in advance by the Claims Processor on the basis of the surgeon's documentation that the correction of the deformity is medically necessary for the maintenance of good physical health.

d. Maternity Care: Independent operative procedures in connection with pregnancy, such as: manipulative obstetrical delivery, delivery by Caesarean section, removal of ectopic pregnancy, dilation and curettage. Benefits for manipulative obstetrical delivery include use of forceps and/or episiotomy. No benefits are provided for antepartum or postpartum care, except for direct surgical procedures of delivery and surgical treatment.

e. Surgical Assistants: Services of an assistant surgeon when medical judgment requires the services of an assistant surgeon and no hospital-employed doctor in training is available.

f. Multiple Procedures: When multiple or bilateral surgical procedures are performed by the same doctor through separate incisions or approaches during the same session, the surgical benefits will be the greater UCR allowance, plus fifty percent (50%) of the lesser UCR allowance. Anesthesia benefits will be the greater UCR allowance.

When multiple surgical procedures are performed by the same doctor through the same incision or operative approach, the surgical benefits are limited to the procedure which has the highest UCR allowance.

When a surgical procedure is performed in two or more stages, the surgical benefit for the entire procedure is the same as it would be were the procedure performed in one stage (except where otherwise provided in the benefit schedule). This limitation does not apply to anesthesia benefits.

g. Cleft Palate: Notwithstanding G.S. 135-40.6(6)a and G.S. 135-40.7(11), medical treatment and care needed by an individual born with cleft palate, including specialized dental and orthodontic care necessitated by the congenital ~~condition, provided that the individual was covered at the time of birth by the Plan or the Predecessor Plan~~ condition."

(k) Effective October 1, 1989, G.S. 135-40.6(8) reads as rewritten:

"(8) Other Covered Charges. --

a. Prescription Drugs: Prescription legend drugs in excess of the first two dollars ($2.00) per prescription for generic drugs and brand name drugs without a generic equivalent and in excess of the first three dollars ($3.00) per prescription for brand name drugs for use outside of a hospital or skilled nursing facility. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: 'Caution: Federal Law Prohibits Dispensing Without Prescription.' Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though prescription is not required.

b. Private Duty Nursing: Services of licensed nurses (not immediate relatives or members of the participant's household or private duty nursing used in lieu of or as a substitute for hospital staff nurses) ordered by the attending doctor for a condition requiring skilled nursing services. Private Duty Nursing ordered must be approved in advance by the Claims Processor as medically necessary. Allowances for Private Duty Nursing shall not exceed the Plan's usual, customary and reasonable allowances or ninety percent (90%) of the daily semiprivate rate by skilled nursing facilities as determined by the Plan.

c. Home Health Agency Services: Services provided in a covered individual's home, when ordered by the attending physician who certifies that hospital or skilled nursing facility confinement would be required without such treatment and cannot be readily provided by family members. Services may include medical supplies, equipment, appliances, therapy services (when provided by a qualified speech therapist or licensed physiotherapist), and nursing services. Nursing services will be allowed for:

1. Services of a registered nurse (RN); or
2. Services of a licensed practical nurse (LPN) under the supervision of a RN; or
3. Services of a home health aide under the supervision of a RN, limited to four hours a day.

Home health services shall be limited to 60 days per fiscal year, except that additional home health services may be provided on an individual basis if prior approval is obtained from the Claims Processor. Plan allowances for home health services shall be limited to licensed or Medicare certified home health agencies and shall not exceed ninety percent

(90%) of the skilled nursing facility semiprivate rates as determined by the Plan, or charges negotiated by the Plan.

d. Licensed Ambulance Service: Local ambulance transportation:
   1. To or from a hospital for inpatient care or outpatient accident care;
   2. From a hospital to the nearest facility able to provide needed services not available at the transferring hospital; or
   3. From a hospital to a skilled nursing facility.

   The word 'local' means ambulance transportation of not more than 50 miles unless the Claims Processor authorizes ambulance transportation beyond this distance.

e. Prosthetic and Orthopedic Appliances and Durable Medical Equipment: Appliances and equipment including corrective and supportive devices such as artificial limbs and eyes, wheelchairs, traction equipment, inhalation therapy and suction machines, hospital beds, braces, orthopedic corsets and trusses, and other prosthetic appliances or ambulatory apparatus which are provided solely for the use of the participant. Eligible charges include repair and replacement when medically necessary. Benefits will be provided on a rental or purchase basis at the sole discretion of the Administrator and agreements to rent or purchase shall be between the Administrator and the supplier of the appliance.

   For the purposes of this subdivision, the term 'durable medical equipment' means standard equipment normally used in an institutional setting which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury and is appropriate for use in the home. Decisions of the Claims Processor, the Executive Administrator and Board of Trustees as to compliance with this definition and coverage under the Plan shall be final.

f. Dental Services: Dental surgery and appliances for mouth, jaw, and tooth restoration necessitated because of external violent and accidental means, such as the impact of moving body, vehicle collision, or fall occurring while an individual is covered under G.S. 135-40.3. No benefits are provided in connection with injury incurred in the act of chewing, nor for damage or breakage of an appliance such as bridge or denture being cleaned or otherwise not in normal mouth usage at the time of accident, nor for appliances for orthodontic treatment when a class of malocclusion, other than orthognathic, or cross bite has been diagnosed. Benefits for

temporomandibular joint (TMJ) disfunction appliance therapy are limited to cases where the TMJ disfunction has been diagnosed as solely resulting from accidental means as certified by the attending practitioner and approved by the Claims Processor.

Benefits shall include extractions, fillings, crowns, bridges, or other necessary therapeutic and restorative techniques and appliances to reasonably restore condition and function to that existing immediately prior to the accident. Injury or breakage of existing appliances such as bridges and dentures is limited to repair of such appliances unless certified as damaged beyond repair.

g. Medical Supplies: Colostomy bags, catheters, dressings, oxygen, syringes and needles, and other similar supplies.
h. Blood: Transfusions including cost of blood, plasma, or blood plasma expanders.
i. Physical Therapy: Recognized forms of physical therapy for restoration of bodily function, provided by a doctor, hospital, or by a licensed professional physiotherapist. No benefits are provided for eye exercises or visual training.
j. Inhalation Therapy: When provided by a doctor, hospital, or other organization.
k. Speech Therapy: Speech therapy provided by certified speech therapist. ~~Benefits are provided only in connection with a condition, illness, or injury arising while continuously covered under this Plan.~~
l. Cataract Lenses: Cataract lenses prescribed as medically necessary for aphakia persons, including charges for necessary examinations and fittings. Benefits will be limited to one set of cataract lenses every 24 months for persons 18 years of age or older, and one set of cataract lenses every 12 months for persons less than 18 years of age.
m. Cardiac Rehabilitation: Charges not to exceed six hundred fifty dollars ($650.00) per fiscal year for cardiac testing and exercise therapy, when determined medically necessary by an attending physician and approved by the Claims Processor for patients with a medical history of myocardial infarction, angina pectoris, arrhythmias, cardiovascular surgery, hyperlipidemia, or hypertension, provided such charges are incurred in a medically supervised facility fully certified by the North Carolina Department of Human Resources.
n. Chiropractic Services: Limited to the alignment of the spine and releasing of pressure by manipulation in accordance with the definitions in G.S. 90-143. Maximum benefits for

x-rays, manipulations, and modalities shall be one thousand dollars ($1,000) per fiscal year.

o. Foot Surgery: All foot surgery on bones and joints in excess of one thousand dollars ($1,000), except for emergencies, shall require prior approval from the Claims Processor.

p. Outpatient Diabetes Self-Care Programs: Charges, not to exceed three hundred dollars ($300.00) per fiscal year, when determined to be medically necessary by an attending physician and approved by the Executive Administrator and Claims Processor as meeting the standards of the National Diabetes Advisory Board for patients with a medical history of diabetes, provided such charges are incurred in a medically supervised facility.

q. Necessary medical services provided to terminally ill patients by duly licensed hospice organizations, when directed by the attending physician and approved in advance by the Claims Processor and the Executive Administrator.

r. Occupational Therapy: Recognized forms of occupational therapy provided by a doctor, hospital, or by a licensed professional occupational therapist to restore fine motor skills for the resumption of bodily functions."

(l) Effective October 1, 1989, G.S. 135-40.7A(b) reads as rewritten:

"(b) Notwithstanding any other provisions of this Part, the maximum benefit for each covered individual for treatment of chemical dependency is as follows:

~~30 Consecutive Days~~	~~$ 3,900~~
Fiscal Year	~~6,500~~ $ 8,000
Lifetime	~~20,000~~ 25,000

Daily benefits are limited to ~~one hundred thirty dollars ($130.00)~~ two hundred dollars ($200.00) except for medical detoxification treatment under rules established by the Executive Administrator and Board of Trustees."

(m) Effective July 1, 1986, G.S. 135-40.8(a) reads as rewritten:

"(a) For the balance of any fiscal year after each eligible employee, retired employee, or dependent satisfies the cash deductible, the Plan pays ninety percent ~~(95%)~~ (90%) of the eligible expenses outlined in G.S. 135-40.6. The covered individual is then responsible for the remaining ten percent (10%) until three hundred dollars ($300.00), in excess of the deductible, has been paid out-of-pocket. The Plan then pays one hundred percent (100%) of the remaining covered expenses."

(n) Effective October 1, 1986, G.S. 40.8(b) reads as rewritten:

"(b) Where a covered individual fails to obtain a second surgical opinion as required under the Plan, the covered individual shall be responsible for fifty percent (50%) of the eligible expenses, provided, however, that no covered individual shall be required to ~~pay~~ pay, in addition to the expenses in subsection (a) above, out-of-pocket in excess of five hundred dollars ($500.00) per fiscal year."

(o) Effective October 1, 1982, G.S. 135-40.10(b) reads as rewritten:

"(b) For those participants eligible for Medicare, the State's ~~new~~ plan will be administered on a 'carve out' basis. The provisions of the ~~new~~ plan are applied to the charges not paid by Medicare (Parts A & B). In other words, those charges not paid by Medicare would be subject to the deductible and coinsurance of the ~~new~~ Plan just as if the charges not paid by Medicaid were the total bill."

(p) G.S. 135-40.11(a) reads as rewritten:

"(a) Coverage under this Plan of an employee and his or her surviving spouse or eligible dependent children or of a retired employee and his or her surviving spouse or eligible dependent children shall cease on the earliest of the following dates:

(1) The last day of the month in which an employee or retired employee dies. Provided such surviving spouse or eligible dependent children were covered under the Plan at the time of death of the former employee or retired employee, or were covered on September 30, 1986, any such surviving spouse or eligible dependent children may then elect to continue coverage under the Plan by submitting written application to the Claims Processor and by paying the cost for such coverage when due at the applicable fees. Such coverage shall cease on the last day of the month in which such surviving spouse or eligible dependent children die, except as provided by this Article.

(2) The last day of the month in which an employee's employment with the State is terminated as provided in subsection (c) of this section.

(3) The last day of the month in which a divorce becomes final.

(4) The last day of the month in which an employee or retired employee requests cancellation of coverage.

(5) The last day of the month in which a covered individual enters active military service.

(6) The last day of the month in which a covered individual is found to have knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the Plan."

Requested by: Senator Royall, Representative Diamont
-----GOVERNOR'S SALARY INCREASE

Sec. 23. (a) Effective July 1, 1989, G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~one hundred nine thousand, seven hundred twenty-eight dollars ($109,728)~~ one hundred sixteen thousand three hundred sixteen dollars ($116,316) annually, payable monthly."

(b) Effective July 1, 1990, G.S. 147-11(a) as amended by subsection (a) of this section reads as rewritten:

"(a) The salary of the Governor shall be ~~one hundred sixteen thousand three hundred sixteen dollars ($116,316)~~ one hundred twenty-three thousand three hundred dollars ($123,300) annually, payable monthly."

Requested by: Senator Royall, Representative Diamont
-----COUNCIL OF STATE/SALARY INCREASE

Sec. 24. The annual salaries for members of the Council of State, payable monthly, for the following fiscal years are:

Council of State	1989-90	1990-91
Lieutenant Governor	$ 70,992	$75,252
Attorney General	70,992	75,252
Secretary of State	70,992	75,252
State Treasurer	70,992	75,252
State Auditor	70,992	75,252
Superintendent of Public Instruction	70,992	75,252
Agriculture Commissioner	70,992	75,252
Insurance Commissioner	70,992	75,252
Labor Commissioner	70,992	75,252.

Requested by: Senator Royall, Representative Diamont
-----NONELECTED DEPARTMENT HEAD/SALARY INCREASES

Sec. 25. In accordance with G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments for the following fiscal years are:

Nonelected Department Heads	1989-90	1990-91
Secretary of Administration	$ 70,992	$75,252
Secretary of Commerce	70,992	75,252
Secretary of Correction	70,992	75,252
Secretary of Crime Control and Public Safety	70,992	75,252
Secretary of Cultural Resources	70,992	75,252
Secretary of Human Resources	70,992	75,252
Secretary of Natural Resources		

and Community Development	70.992	75.252
Secretary of Revenue	70.992	75.252
Secretary of Transportation	70.992	75.252.

Requested by: Senator Royall, Representative DeVane
-----LEGISLATORS/SALARY AND EXPENSES INCREASE

Sec. 26. Effective upon convening of the 1991 Regular Session of the General Assembly, G.S. 120-3 reads as rewritten:

"*§ 120-3. Pay of members and officers of the General Assembly.*

(a) The Speaker of the House shall be paid an annual salary of ~~thirty-one thousand two hundred twenty-four dollars ($31,224)~~ thirty-five thousand one hundred dollars $35,100, payable monthly, and an expense allowance of ~~one thousand one hundred seventy-five dollars ($1,175)~~ one thousand three hundred twenty dollars ($1,320) per month. The President Pro Tempore of the Senate shall be paid an annual salary of ~~nineteen thousand one hundred four dollars ($19,104)~~ thirty-five thousand one hundred dollars ($35,100), payable monthly, and an expense allowance of ~~eight hundred thirty-three dollars ($833.00)~~ one thousand three hundred twenty dollars ($1,320) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of ~~seventeen thousand five hundred ninety-two dollars ($17,592)~~ nineteen thousand seven hundred seventy-six dollars ($19,776), payable monthly, and an expense allowance of ~~six hundred ninety-four dollars ($694.00)~~ seven hundred eighty dollars ($780.00) per month; and the Deputy President Pro Tempore of the Senate shall be paid an annual salary of ~~sixteen thousand eighty dollars ($16,080)~~ nineteen thousand seven hundred seventy-six dollars ($19,776), payable monthly, and an expense allowance of ~~five hundred fifty-four dollars ($554.00)~~ seven hundred eighty dollars ($780.00) per month. The majority and minority ~~leader~~ leaders in the House and the majority and minority leaders in the Senate shall be paid an annual salary of ~~thirteen thousand six hundred eighty-eight dollars ($13,688)~~ fifteen thousand three hundred ninety-six dollars ($15,396), payable monthly, and an expense allowance of ~~five hundred fifty-four dollars ($554.00)~~ six hundred twenty-two dollars ($622.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next Regular Session of the General Assembly after enactment of these increased amounts. Accordingly, upon convening of the ~~1989 Regular Session~~ 1991 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of ~~eleven thousand one hundred twenty-four dollars ($11,124)~~ twelve thousand five hundred four dollars

($12,504), payable monthly, and an expense allowance of ~~four hundred sixty-five dollars ($465.00)~~ five hundred twenty-two dollars ($522.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission."

Requested by: Senator Royall, Representative Diamont

-----GENERAL ASSEMBLY PRINCIPAL CLERKS/SALARY INCREASES

Sec. 27. G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~forty-one thousand seventy-six dollars ($41,076)~~ forty-three thousand five hundred forty-eight dollars ($43,548) from July 1, 1989 through June 30, 1990, and an annual salary of forty-six thousand one hundred sixty-four dollars ($46,164) on and after July 1, 1990, payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

Requested by: Senator Royall, Representative Diamont

-----SERGEANT-AT-ARMS AND READING CLERKS/SALARY INCREASES

Sec. 28. G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~one hundred eighty-five dollars ($185.00)~~ one hundred ninety-seven dollars ($197.00) per week from July 1, 1989 through June 30, 1990, and two hundred nine dollars ($209.00) per week on and after July 1, 1990, plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

Requested by: Senator Royall, Representative Diamont
-----LEGISLATIVE EMPLOYEES/SALARY INCREASES

Sec. 29. (a) The Legislative Administrative Officer may increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 1988-89 by an amount equal to six percent (6%), rounded to conform to the steps in the salary ranges adopted by the Legislative Services Commission, commencing July 1, 1989. Nothing in this Part limits any of the provisions of G.S. 120-32.

(b) The Legislative Administrative Officer may increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 1989-90 by an amount equal to six percent (6%), rounded to conform to the steps in the salary ranges adopted by the Legislative Services Commission, commencing July 1, 1990. Nothing in this Part limits any of the provisions of G.S. 120-32.

Requested by: Senator Royall, Representative Diamont
-----JUDICIAL BRANCH OFFICIALS/SALARY INCREASE

Sec. 30. (a) The annual salaries, payable monthly, for specified judicial branch officials for following fiscal years are:

Judicial Branch Officials	1989-90	1990-91
Chief Justice, Supreme Court	$ 86,232	$91,416
Associate Justice, Supreme Court	84,456	89,532
Chief Judge, Court of Appeals	81,756	86,664
Judge, Court of Appeals	79,968	84,768
Judge, Senior Regular Resident Superior Court	73,332	77,736
Judge, Superior Court	70,992	75,252
Chief Judge, District Court	62,628	66,396
Judge, District Court	60,240	63,864
District Attorney	66,060	70,032
Assistant District Attorney - an average of	42,732	45,300
Administrative Officer of the Courts	73,332	77,736
Assistant Administrative Officer of the Courts	59,772	63,360
Public Defender	66,060	70,032
Assistant Public Defender - an average of	42,732	45,300.

If an acting senior regular resident superior court judge is appointed under the provisions of G.S. 7A-41, he shall receive the salary for Judge, Senior Regular Resident, Superior Court, until his temporary appointment is vacated, and the judge he replaces shall receive the salary indicated for Judge, Superior Court.

The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed forty-two thousand seven hundred thirty-two dollars ($42,732) effective July 1, 1989, and forty-five thousand three hundred dollars ($45,300) effective July 1, 1990, and the minimum salary of any assistant district attorney or assistant public defender is at least twenty-one thousand five hundred seventy-six dollars ($21,576) effective July 1, 1989, and twenty-two thousand eight hundred seventy-two dollars ($22,872) effective July 1, 1990.

(b) The salaries in effect for fiscal year 1988-89 for permanent employees of the Judicial Department, except for those whose salaries are itemized in this Part, shall be increased by an amount, commencing July 1, 1989, equal to six percent (6%), rounded to conform to the steps in the salary ranges adopted by the Judicial Department.

(c) The salaries in effect for fiscal year 1989-90 for permanent employees of the Judicial Department, except for those whose salaries are itemized in this Part, shall be increased by an amount, commencing July 1, 1990, equal to six percent (6%), rounded to conform to the steps in the salary ranges adopted by the Judicial Department.

Requested by: Senator Royall, Representative Diamont

-----CLERKS OF COURT/SALARY INCREASE

Sec. 31. G.S. 7A-101(a) reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county, as determined by the population projections of the Office of State Budget and Management for the year preceding the first year of each biennial budget, according to the following schedule:

Population	Annual Salary	
	1989-90	1990-91
Less than 30,000	$ ~~36,288~~ 38,472	40,788
30,000 to 99,999	~~41,748~~ 44,256	46,920
100,000 to 199,999	~~47,184~~ 50,016	53,028
200,000 and above	~~53,832~~ 57,072	60,504

When a county changes from one population group to another, the salary of the clerk shall be changed to the salary appropriate for the new population group on July 1 of the first year of each biennial

budget, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

Requested by: Senator Royall, Representative Diamont
-----ASSISTANT AND DEPUTY CLERKS OF COURT/SALARY INCREASE

Sec. 32. G.S. 7A-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a), the Administrative Officer of the Courts shall establish an incremental salary plan for assistant clerks and for deputy clerks based on a series of salary steps corresponding to the steps contained in the Salary Plan for State Employees adopted by the Office of State Personnel, subject to a minimum and a maximum annual salary as set forth below. On and after July 1, 1985, each assistant clerk and each deputy clerk shall be eligible for an annual step increase in his salary plan based on satisfactory job performance as determined by each clerk. Notwithstanding the foregoing, if an assistant or deputy clerk's years of service in the office of superior court clerk would warrant an annual salary greater than the salary first established under this section, that assistant or deputy clerk shall be eligible on and after July 1, 1984, for an annual step increase in his salary plan. Furthermore, on and after July 1, 1985, that assistant or deputy clerk shall be eligible for an increase of two steps in his salary plan, and shall remain eligible for a two-step increase each year as recommended by each clerk until that assistant or deputy clerk's annual salary corresponds to his number of years of service. A full-time assistant clerk or a full-time deputy clerk shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks	Annual Salary	
	1989-90	1990-91
Minimum	$ ~~18,420~~ 19,536	20,712
Maximum	~~30,912~~ 32,772	34,740

Deputy Clerks Annual Salary		
	1989-90	1990-91
Minimum	$ ~~14,436~~ 15,312	16,236
Maximum	~~23,700~~ 25,128	26,640"

Requested by: Senator Royall, Representative Diamont
-----MAGISTRATES/SALARY INCREASE

Sec. 33. G.S. 7A-171.1(a) reads as rewritten:

"(a) The Administrative Officer of the Courts, after consultation with the chief district judge and pursuant to the following provisions, shall set an annual salary for each magistrate.

(1) A full-time magistrate, so designated by the Administrative Officer of the Courts, shall be paid the annual salary indicated in the table below according to the number of years he has served as a magistrate. The salary steps shall take effect on the anniversary of the date the magistrate was originally appointed:

Table of Salaries of Full-Time Magistrates

Number of Prior Years of Service	Annual Salary 1989-90	1990-91
Less than 1	$ ~~14,712~~ 15,600	$16,536
1 or more but less than 3	~~15,480~~ 16,416	17,412
3 or more but less than 5	~~17,052~~ 18,084	19,176
5 or more but less than 7	~~18,792~~ 19,920	21,120
7 or more but less than 9	~~20,724~~ 21,972	23,292
9 or more but less than 11	~~22,824~~ 24,204	25,656
11 or more	~~25,116~~ 26,628	28,236

A 'Full-time magistrate' is a magistrate who is assigned to work an average of not less than 40 hours a week during his term of office.

Notwithstanding any other provision of this subdivision, a full-time magistrate, who was serving as a magistrate on December 31, 1978, and who was receiving an annual salary in excess of that which would ordinarily be allowed under the provisions of this subdivision, shall not have the salary, which he was receiving reduced during any subsequent term as a full-time magistrate. That magistrate's salary shall be fixed at the salary level from the table above which is nearest and higher than the latest annual salary he was receiving on December 31, 1978, and, thereafter, shall advance in accordance with the schedule in the table above.

(2) A part-time magistrate, so designated by the Administrative Officer of the Courts, is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and 135-40.2(a) and shall receive an annual salary based on the following formula: The average number of hours a week that a part-time magistrate is assigned work during his term shall be multiplied by the annual salary payable to a full-time magistrate who has the same number of years of service prior to the beginning of that term as does the part-time magistrate and the product of that multiplication shall be

divided by the number 40. The quotient shall be the annual salary payable to that part-time magistrate.

A 'part-time magistrate' is a magistrate who is assigned to work an average of less than 40 hours of work a week during his term. No magistrate may be assigned an average of less than 10 hours of work a week during his term.

Notwithstanding any other provision of this subdivision, upon reappointment as a magistrate and being assigned to work the same or greater number of hours as he worked as a magistrate for a term of office ending on December 31, 1978, a person who received an annual salary in excess of that to which he would be entitled under the formula contained in this subdivision shall receive an annual salary equal to that received during the prior term. That magistrate's salary shall increase in accordance with the salary formula contained in this subdivision.

(3) Notwithstanding any other provision of this section, a ~~beginning full-time~~ magistrate with a two-year Associate in Applied Science degree in criminal justice or paralegal training from a North Carolina community college or the equivalent degree from a private educational institution in North Carolina, ~~may be initially employed at~~ shall receive the annual salary provided in the table above for a magistrate with ~~'3 or more but less than 5' years of service; a beginning full-time~~ three years of service in addition to those which the magistrate has served; a magistrate with a four-year degree from an accredited senior institution of higher education ~~may be initially employed at~~ shall receive the annual salary provided in the table above for a magistrate with ~~'5 or more but less than 7' years of service; a beginning full-time~~ five years of service in addition to those which the magistrate has served; a magistrate who holds a law degree from an accredited law school ~~may be employed at~~ shall receive the annual salary provided in the table above for a magistrate with ~~'7 or more but less than 9' years of service; and a beginning full-time~~ seven years of service in addition to those which the magistrate has served; and a magistrate who is licensed to practice law in North Carolina ~~may be initially employed at~~ shall receive the annual salary provided in the table above for a magistrate with nine years of service in addition to those which the magistrate has served. ~~'9 or more but less than 11' years of service. Seniority increments for a magistrate with a two or four-year degree or a law degree or for a magistrate licensed to~~

~~practice law in North Carolina as described herein accrue thereafter at two-year intervals, as provided in the table.~~

Magistrates with a two or four-year degree or a law degree described herein who became magistrates before July 1, 1979 are entitled to an increase of three, five and seven years, respectively, in their seniority, for pay purposes only. Full-time magistrates licensed to practice law in North Carolina who became magistrates before July 1, 1979 are entitled to the pay of a magistrate with 9 or more years of service, and part-time magistrates holding a law degree or a license to practice law as described above who became magistrates before July 1, 1979 are entitled to a proportionate adjustment in their pay. Pay increases authorized by this paragraph of this subdivision are not retroactive.

(4) Notwithstanding any other provision of this section, a ~~beginning full-time~~ magistrate with 10 years' experience within the last 12 years as a sheriff or deputy sheriff, administrative officer for a district attorney, city or county police officer, or highway patrolman in the State of North Carolina, or with 10 years' experience within the last 12 years as clerk of superior court or an assistant or deputy clerk of court in the State of North Carolina ~~may be initially employed at~~ shall receive the annual salary provided in the table in subdivision (1) for a magistrate with five years of service in addition to those the magistrate has served. A magistrate who qualifies for the increased salary under both subdivisions (3) and (4) of this subsection shall receive either the salary determined under subdivision (3) or that determined under subdivision (4), whichever is higher, but no more. ~~'five or more but less than seven' years of service. Seniority increments for a magistrate with the law-enforcement or judicial system experience described above accrue thereafter at two-year intervals, as provided in the table. A beginning magistrate who meets the criteria for increased beginning salary under both subdivisions (3) and (4) may not combine those entry levels but may begin at the higher of the two levels.~~

(5) The Administrative Officer of the Courts shall provide magistrates with longevity pay at the same rates as are provided by the State to its employees subject to the State Personnel Act."

Requested by: Senator Royall, Representative Diamont

-----COMMUNITY COLLEGES PERSONNEL/SALARY INCREASES

Sec. 34. (a) The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1989-90 funds necessary to provide an average annual salary increase of six percent (6%), including funds for the employer's retirement and Social Security contributions, commencing July 1, 1989, for all permanent community college institutional personnel supported by State funds. Subject to the availability of funds, the salaries for temporary community college institutional personnel may be increased by pro rata amounts of the six percent (6%) average annual salary increase provided for permanent institutional employees. These funds may not be used for any purpose other than for the salary increases and necessary employer contributions provided by this section.

(b) The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1990-91 funds necessary to provide an average annual salary increase of six percent (6%), including funds for the employer's retirement and Social Security contributions, commencing July 1, 1990, for all permanent community college institutional personnel supported by State funds. Subject to the availability of funds, the salaries for temporary community college institutional personnel may be increased by pro rata amounts of the six percent (6%) average annual salary increase provided for permanent institutional employees. These funds may not be used for any purpose other than for the salary increases and necessary employer contributions provided by this section.

Requested by: Senator Royall, Diamont

-----HIGHER EDUCATION PERSONNEL/SALARY INCREASES

Sec. 35. (a) The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1989-90 funds necessary to provide an annual average salary increase of six percent (6%), including funds for the employer's retirement and Social Security contributions, commencing July 1, 1989, for all employees of The University of North Carolina, as well as employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act. These funds shall be allocated to individuals according to rules adopted by the Board of Governors, or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for the salary increases and necessary employer contributions provided by this section.

(b) The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1990-91 funds necessary to provide an annual average salary increase of six percent (6%), including funds for the employer's retirement and Social Security contributions, commencing July 1, 1990, for all employees of The University of North Carolina, as well as employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act. These funds shall be allocated to individuals according to rules adopted by the Board of Governors, or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for the salary increases and necessary employer contributions provided by this section.

Requested by: Senator Royall, Representative Diamont
-----MOST STATE EMPLOYEES/SALARY INCREASES/1989-90

Sec. 36. (a) The salaries in effect for fiscal year 1988-89 for all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund shall be increased, on and after July 1, 1989, unless otherwise provided by this Part, by an average of four percent (4%), rounded to conform to the steps in the salary ranges adopted by the State Personnel Commission. If an employee's salary for fiscal year 1988-89 is not equal to a specific pay rate on the 1988-89 salary schedule, his salary increase, effective July 1, 1989, unless otherwise provided by this Part, shall be four percent (4%) with the annual salary adjusted so as to be divisible by 12. The provisions of this subsection shall also apply to employees whose salaries are determined in accordance with G.S. 20-187.3(a).

(b) The salary increase reserve funds in Sections 3 and 4 of this act contain funds equivalent to an average annual salary increase of two percent (2%) for permanent State employees, which shall be transferred by the Director of the Budget, including funds for the employer's retirement and Social Security contributions, to all employing agencies to be awarded, on and after July 1, 1989, to permanent State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund, on the basis of job performance that exceeds satisfactory levels in accordance with the policies, rules, and regulations established by the State Personnel Commission. The funds so transferred by the Director of the Budget shall be computed on the annualized salaries payable on June 30, 1989, so as not to be compounded with any other increases in salary granted by the 1989

General Assembly. The provisions of this subsection shall not apply to employees whose salaries are determined in accordance with G.S. 20-187.3(a). During the fiscal year covered by this section, no employee shall receive more than a six percent (6%) increase in his or her annual salary as a result of this subsection.

(c) Except as otherwise provided in this act, the fiscal year 1988-89 salaries for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by an average of six percent (6%), commencing July 1, 1989.

(d) The salaries in effect for fiscal year 1988-89 for all permanent part-time State employees shall be increased on and after July 1, 1989, by pro rata amounts of the four percent (4%) average salary increase provided for permanent full-time employees covered under subsection (a) of this section.

(e) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to allow a salary increase, on and after July 1, 1989, in accordance with subsections (a) and (b), or subsection (c), or subsections (b) and (d), including funds for the employer's retirement and Social Security contributions, for the permanent full-time and part-time employees of the agency, provided the employing agency elects to make available the necessary funds.

(f) Within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by pro rata amounts of the four percent (4%) average salary increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 1989.

Requested by: Senator Royall, Representative Diamont

-----MOST STATE EMPLOYEES/SALARY INCREASES/1990-91

Sec. 37. (a) The salaries in effect for fiscal year 1989-90 for all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund shall be increased, on and after July 1, 1990, unless otherwise provided by this Part, by an average of four percent (4%), rounded to conform to the steps in the salary ranges adopted by the State Personnel Commission. If an employee's salary for fiscal year 1989-90 is not equal to a specific pay rate on the 1989-90 salary schedule, his salary increase, effective July 1, 1990,

unless otherwise provided by this Part, shall be four percent (4%) with the annual salary adjusted so as to be divisible by 12. The provisions of this subsection shall also apply to employees whose salaries are determined in accordance with G.S. 20-187.3(a).

(b) The salary increase reserve funds in Sections 3 and 4 of this act contain funds equivalent to an average annual salary increase of two percent (2%) for permanent State employees, which shall be transferred by the Director of the Budget, including funds for the employer's retirement and Social Security contributions, to all employing agencies to be awarded, on and after July 1, 1990, to permanent State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund, on the basis of job performance that exceeds satisfactory levels in accordance with the policies, rules, and regulations established by the State Personnel Commission. The funds so transferred by the Director of the Budget shall be computed on the annualized salaries payable on June 30, 1990, so as not to be compounded with any other increases in salary granted by the 1989 General Assembly. The provisions of this subsection shall not apply to employees whose salaries are determined in accordance with G.S. 20-187.3(a). During the fiscal year covered by this section, no employee shall receive more than a six percent (6%) increase in his or her annual salary as a result of this subsection.

(c) Except as otherwise provided in this act, the fiscal year 1989-90 salaries for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by an average of six percent (6%), commencing July 1, 1990.

(d) The salaries in effect for fiscal year 1989-90 for all permanent part-time State employees shall be increased on and after July 1, 1990, by pro rata amounts of the four percent (4%) average salary increase provided for permanent full-time employees covered under subsection (a) of this section.

(e) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to allow a salary increase, on and after July 1, 1990, in accordance with subsections (a) and (b), or subsection (c), or subsections (b) and (d), including funds for the employer's retirement and Social Security contributions, for the permanent full-time and part-time employees of the agency, provided the employing agency elects to make available the necessary funds.

(f) Within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an

equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by pro rata amounts of the four percent (4%) average salary increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 1990.

Requested by: Senator Royall, Representative Diamont
-----PUBLIC SCHOOL PERSONNEL/SALARY INCREASES

Sec. 38. (a) Superintendents, Assistant Superintendents, Associate Superintendents, Supervisors, Directors, Coordinators, Evaluators, Program Administrators, Principals, and Assistant Principals--1989-90. The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1989-90 funds necessary to provide an annual salary increase of six percent (6%), including funds for the employer's retirement and Social Security contributions, commencing July 1, 1989, for all superintendents, assistant superintendents, associate superintendents, supervisors, directors, coordinators, evaluators, program administrators, principals, and assistant principals whose salaries are supported from the State's General Fund. These funds may not be used for any purpose other than for the salary increase and necessary employer contributions provided by this subsection.

(a1) Salary schedule for administrators.-- Prior to April 1, 1990, the State Board of Education and the Superintendent of Public Instruction shall develop a salary schedule for superintendents, assistant superintendents, associate superintendents, supervisors, directors, coordinators, evaluators, program administrators, principals, and assistant principals whose salaries are supported from the State's General Fund. The schedule shall be similar to that mandated by the General Assembly for teachers and shall incorporate (i) 30 annual salary steps based on years of experience, with a two percent (2%) difference between steps except for between the third and fourth steps which shall have a five percent (5%) difference, (ii) additional salary increments for additional academic preparation, and (iii) annual longevity pay at two and one-half percent (2.5%) of base salary only upon completion of 25 years of State service.

The State Board of Education and the Superintendent of Public Instruction shall also develop a schedule for implementing this salary schedule as soon as practicable, commencing not later than July 1, 1990, and for completing the implementation of the salary schedule no later than June 30, 1994.

The State Board of Education and the Superintendent of Public Instruction shall report to the President Pro Tempore of the Senate,

the Speaker of the House of Representatives, and the chairmen of the appropriations committees of the Senate and the House of Representatives prior to April 1, 1990, on the salary schedule developed pursuant to this subsection and the proposed implementation schedule for this salary schedule.

(a2) Superintendents, Assistant Superintendents, Associate Superintendents, Supervisors, Directors, Coordinators, Evaluators, Program Administrators, Principals, and Assistant Principals--1990-91. The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1990-91 funds necessary to provide an average annual salary increase of six percent (6%), including funds for the employer's retirement and Social Security contributions, commencing July 1, 1990, for all superintendents, assistant superintendents, associate superintendents, supervisors, directors, coordinators, evaluators, program administrators, principals, and assistant principals whose salaries are supported from the State's General Fund. These funds shall be allocated to individuals according to rules adopted by the State Board of Education and the Superintendent of Public Instruction so as to begin the first year of the implementation schedule of the salary schedule developed pursuant to subsection (a1) of this section. These funds may not be used for any purpose other than for the salary increase and necessary employer contributions provided by this subsection.

(b) Teachers. The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1989-90 and for fiscal year 1990-91 funds necessary to provide an annual average salary increase of six percent (6%), including funds for the employer's retirement and Social Security contributions and funds for annual longevity payments at two and one-half percent (2.5%) of base salary only upon the completion of 25 years of State service, commencing July 1, 1989, and July 1, 1990, for all teachers whose salaries are supported from the State's General Fund. These funds shall be allocated to individuals according to rules adopted by the State Board of Education and the Superintendent of Public Instruction to begin the first and second years of the three-year implementation schedule. This salary schedule, which incorporates (i) 30 annual salary steps based on years of experience, with a two percent (2%) difference between steps except for between the third and fourth steps which shall have a five percent (5%) difference and (ii) a five percent (5%) salary increase for teachers with certification based on academic preparation at the master's degree level.

This schedule shall be as follows:

(1) Beginning July 1, 1989, and ending June 30, 1992, the following monthly salary schedule shall be phased in for certified personnel of the public schools who are classified as "A" teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

Years Experience	1989-90 Salary	1990-91 Salary
0	$1,914	$1,981
1	1,986	2,021
2	2,002	2,111
3	2,020	2,141
4	2,037	2,172
5	2,106	2,204
6	2,196	2,263
7	2,215	2,332
8	2,234	2,366
9	2,297	2,400
10	2,316	2,458
11	2,336	2,494
12	2,417	2,530
13	2,438	2,598
14	2,521	2,636
15	2,543	2,706
16	2,631	2,746
17	2,726	2,819
18	2,749	2,897
19	2,850	2,939
20	2,874	3,021
21	2,976	3,065
22	3,001	3,149
23	3,027	3,195
24	3,053	3,241
25	3,079	3,288
26	3,106	3,336
27	3,134	3,386
28	3,162	3,436
29+	3,191	3,487

(2) Beginning July 1, 1989, and ending June 30, 1992, the following monthly salary schedule shall be phased in for certified personnel of the public schools who are classified as "G" teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

Years Experience	1989-90 Salary	1990-91 Salary
0	$2,059	$2,105
1	2,134	2,147
2	2,152	2,241
3	2,170	2,273
4	2,188	2,306
5	2,267	2,339
6	2,346	2,404
7	2,366	2,469
8	2,386	2,505
9	2,468	2,541
10	2,489	2,609
11	2,510	2,647
12	2,531	2,685
13	2,619	2,724
14	2,714	2,798
15	2,736	2,875
16	2,837	2,916
17	2,861	2,998
18	2,963	3,042
19	2,988	3,125
20	3,099	3,170
21	3,124	3,259
22	3,239	3,306
23	3,265	3,399
24	3,293	3,447
25	3,321	3,497
26	3,349	3,548
27	3,378	3,600
28	3,408	3,652
29+	3,438	3,706

(3) The rules adopted by the State Board for allocating funds to individuals shall provide for (i) a seven and one-half percent (7.5%) salary increase for teachers with certification based on academic preparation at the six-year degree level; (ii) a ten percent (10%) salary increase for teachers with certification based on academic preparation at the doctoral degree level; and (iii) annual longevity pay at two and one-half percent (2.5%) of base salary only upon the completion of 25 years of State service.

(c) Noncertified Employees. The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1989-90 funds necessary to provide an annual

average salary increase of four percent (4%), including funds for the employer's retirement and Social Security contributions, commencing July 1, 1989, for all noncertified public school employees, except school bus drivers, whose salaries are supported from the State's General Fund. An additional amount of funds equal to an average annual salary increase of two percent (2%) for these employees may also be transferred by the Director of the Budget for fiscal year 1989-90 to further adjust the salaries and State salary schedules for noncertified employees commensurate, insofar as possible, with the salary schedules for comparable State employees whose salaries are set in accordance with the State Personnel Act, as determined by the State Board of Education and the Superintendent of Public Instruction. The salary adjustment funds so transferred by the Director of the Budget shall be computed on the annualized salaries payable on June 30, 1989, so as not to be compounded with any other increases in salary granted by the 1989 General Assembly. In addition, local boards of education are authorized to use, within available funds, any unexpended salary allocations for noncertified personnel to further help relieve any salary inequities for noncertified employees through salary adjustments. These funds shall be allocated to individuals according to rules adopted by the State Board of Education and the Superintendent of Public Instruction and may not be used for any purpose other than for the salary increases and necessary employer contributions provided by this subsection.

(c1) Noncertified Employees. The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1990-91 funds necessary to provide an annual average salary increase of four percent (4%), including funds for the employer's retirement and Social Security contributions, commencing July 1, 1990, for all noncertified public school employees, except school bus drivers, whose salaries are supported from the State's General Fund. An additional amount of funds equal to an average annual salary increase of two percent (2%) for these employees may also be transferred by the Director of the Budget for fiscal year 1990-91 to further adjust the salaries and State salary schedules for noncertified employees commensurate, insofar as possible, with the salary schedules for comparable State employees whose salaries are set in accordance with the State Personnel Act, as determined by the State Board of Education and the Superintendent of Public Instruction. The salary adjustment funds so transferred by the Director of the Budget shall be computed on the annualized salaries payable on June 30, 1990, so as not to be compounded with any other increases in salary granted by the 1989 General Assembly. These funds shall be allocated to individuals according to rules adopted by the State Board

of Education and the Superintendent of Public Instruction and may not be used for any purpose other than for the salary increases and necessary employer contributions provided by this subsection.

(d) The fiscal year 1988-89 pay rates adopted by local boards of education for school bus drivers shall be increased by at least six percent (6%), on and after July 1, 1989, to the extent that such rates of pay are supported by the allocation of State funds from the State Board of Education. Local boards of education shall increase the rates of pay for all school bus drivers who were employed during fiscal year 1988-89 and who continue their employment for fiscal year 1989-90 by at least six percent (6%), on and after July 1, 1989. The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1989-90 funds necessary to provide the salary increases for school bus drivers whose salaries are supported from the State's General Fund in accordance with the provisions of this subsection.

(d1) The fiscal year 1989-90 pay rates adopted by local boards of education for school bus drivers shall be increased by at least six percent (6%), on and after July 1, 1990, to the extent that such rates of pay are supported by the allocation of State funds from the State Board of Education. Local boards of education shall increase the rates of pay for all school bus drivers who were employed during fiscal year 1989-90 and who continue their employment for fiscal year 1990-91 by at least six percent (6%), on and after July 1, 1990. The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1990-91 funds necessary to provide the salary increases for school bus drivers whose salaries are supported from the State's General Fund in accordance with the provisions of this subsection.

Requested by: Senator Royall, Representative Diamont

-----CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES

Sec. 39. (a) The annual salaries, payable monthly, for the following fiscal years for the following executive branch officials are:

Executive Branch Officials	Annual Salary 1989-90	1990-91
Chairman, Alcoholic Beverage Control Commission	$ 68,304	$ 72,408
State Controller	110,772	117,420
Commissioner of Motor Vehicles	68,304	72,408
Commissioner of Banks	68,304	72,408
Chairman, Employment Security Commission	68,304	72,408
State Personnel Director	70,992	75,252

Chairman, Parole Commission	62,328	66,072
Members of the Parole Commission	57,504	60,960
Chairman, Industrial Commission	61,320	65,004
Members of the Industrial Commission	59,808	63,408
Executive Director, Agency for Public Telecommunications	57,504	60,960
General Manager, Ports Railway Commission	51,876	54,996
Director, Museum of Art	70,008	74,208
Director, State Ports Authority	79,392	84,156
Executive Director, Wildlife Resources Commission	58,884	62,424
Executive Director, North Carolina Housing Finance Agency	84,648	89,736
Executive Director, North Carolina Technological Development Authority	45,156	47,868
Executive Director, North Carolina Agricultural Finance Authority	66,468	70,464
Director, Office of Administrative Hearings	60,240	63,864.

(b) Any person carrying on the functions of a position listed in subsection (a) of this section shall be paid only the salary set out in that subsection, and the mere classification of the position to be some other position does not allow the salary of that position to be set in some other manner.

(c) G.S. 53-93.1 reads as rewritten:

"*§ 53-93.1. Deputy commissioner.*

The Commissioner of Banks shall appoint, with approval of the Governor, and may remove at his discretion a deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner of Banks, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner of Banks. ~~He shall receive such compensation as shall be fixed by the General Assembly in the Current Operations Appropriations Act.~~

Irrespective of the conditions under which the deputy commissioner may exercise the powers and perform the duties of the Commissioner of Banks, pursuant to the preceding paragraph, such deputy commissioner, in addition thereto, is hereby authorized and empowered at any and all times, at the discretion of the Commissioner of Banks, to perform such duties and exercise such powers of the Commissioner of Banks in the name of and on behalf of the Commissioner as the Commissioner, in his discretion, may direct.

This section is not to be construed to modify the provisions of G.S. 53-97."

(d) G.S. 113-315.26 reads as rewritten:

"§ *113-315.26. Personnel.*

The Secretary of Commerce shall appoint such ~~management~~ personnel as deemed necessary who shall serve at the pleasure of the Secretary of Commerce. ~~The salaries of these personnel shall be fixed by the General Assembly in the Current Operations Appropriations Act.~~ The Secretary of Commerce shall have the power to appoint, employ and dismiss such number of employees as he may deem necessary to accomplish the purposes of this Article subject to the availability of funds. ~~The power to appoint, employ and dismiss personnel, and to fix the number thereof, may be delegated to one or more of the management personnel upon such terms and subject to such restrictions and limitations as the Secretary of Commerce may deem proper. The compensation of such employees shall be fixed by the Secretary of Commerce.~~ It is recommended that, to the fullest extent possible, the Secretary of Commerce consult with the Authority on matters of personnel."

Requested by: Senator Royall, Representative Diamont

-----ALL STATE-SUPPORTED PERSONNEL/SALARY INCREASES

Sec. 40. (a) Salaries for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

(b) The granting of the salary increases under this Part does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this Part.

(c) The salary range maximums for all employees shall be increased to accommodate the across-the-board salary increase provided by this Part so that every employee will continue to have the same relative position with respect to salary increases and future increments as he would have had if these salary increases had not been made.

(d) The salary increases provided in this Part to be effective July 1, 1989, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, whose last workday is prior to July 1, 1989; or to employees involved in written disciplinary procedures. Payroll checks issued to employees after July 1, 1989, which represent payment for services provided prior to July 1, 1989, shall not be eligible for salary increases

provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

(d1) The salary increases provided in this Part to be effective July 1, 1990, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, whose last workday is prior to July 1, 1990; or to employees involved in written disciplinary procedures. Payroll checks issued to employees after July 1, 1990, which represent payment for services provided prior to July 1, 1990, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

(e) Notwithstanding the provisions of Section 19.1 of Chapter 1137 of the 1979 Session Laws as amended by Chapter 1053 of the 1981 Session Laws, G.S. 115C-12(9)a., 115C-12(16), 126-7, or any other provision of law other than G.S. 20-187.3(a) or G.S. 7A-102(c), no employee or officer of the public school system shall receive an automatic increment, and no State employee or officer shall receive a merit increment, during the 1989-90 fiscal year, or the 1990-91 fiscal year, except as otherwise permitted by this act.

(f) The Director of the Budget shall transfer from the salary increase reserve funds created in Sections 3 and 4 of this act for fiscal year 1989-90 and fiscal year 1990-91 all funds necessary for the salary increases provided by this Part, including funds for the employer's retirement and Social Security contributions.

(g) Nothing in this Part authorizes the transfer of funds from the General Fund to the Highway Fund for salary increases.

(h) Salary increases provided by this Part shall be computed on the annualized salaries payable on June 30, 1989, and June 30, 1990, so as not to be compounded with any other increases granted by the 1989 General Assembly.

Requested by: Senator Royall, Representative Diamont

-----POST-RETIREMENT ALLOWANCE INCREASES/RETIRED TEACHERS, STATE EMPLOYEES, JUDICIAL OFFICIALS, LOCAL GOVERNMENT EMPLOYEES, AND LEGISLATORS

Sec. 41. (a) G.S. 135-5 is amended by adding a new subsection to read:

"(pp) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%)

of the allowance payable on July 1, 1988, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989."

(b) G.S. 135-65 is amended by adding a new subsection to read:

"(j) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988. Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989."

(c) G.S. 128-27 is amended by adding a new subsection to read:

"(ff) From and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1988, shall be increased by three and one-half percent (3.5%) of the allowance payable on July 1, 1988, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1988, but before June 30, 1989, shall be increased by a prorated amount of three and one-half percent (3.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1988, and June 30, 1989."

(d) G.S. 120-4.22A is amended by adding a new subsection to read:

"(e) In accordance with subsection (a) of this section, from and after July 1, 1989, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1989, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(11) and (mm)."

(e) Of the funds appropriated to the General Assembly in Section 3 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, for the 1989-90 fiscal year, the sum of

$135,000 shall be transferred to the Legislative Retirement System to fund the provisions of subsection (d) of this section.

(f) Notwithstanding the provisions of G.S. 135-5(o) and G.S. 128-27(k), it is the intent of the 1989 Session of the General Assembly that the retirement allowances to or on account of beneficiaries of the Retirement Systems covered by subsections (a), (b), and (c) of this section be increased for fiscal year 1990-91 by six and one-tenth percent (6.1%) of the allowances payable for fiscal year 1989-90, subject to the availability of unencumbered actuarial gains in the Retirement Systems for the year ending December 31, 1988.

Requested by: Senator Royall, Representative Diamont
-----SALARY RELATED CONTRIBUTIONS/EMPLOYERS

Sec. 42. (a) Required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income and disability salary continuation benefits.

(b) Effective September 1, 1989, the State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 1989-90 fiscal year are (i) eleven and sixty-four hundredths percent (11.64%) - Teachers and State Employees; (ii) sixteen and sixty-four hundredths percent (16.64%) - State Law Enforcement Officers; (iii) eight and seventeen hundredths percent (8.17%) - University Employees' Optional Retirement Program; (iv) thirty-one and twenty-six hundredths percent (31.26%) - Consolidated Judicial Retirement System; and (v) thirty-eight and seventy-five hundredths percent (38.75%) - Legislative Retirement System. Each of the foregoing contribution rates includes one and fifty-five hundredths percent (1.55%) for hospital and medical benefits. The rate for State Law Enforcement Officers includes five percent (5%) for the Supplemental Retirement Income Plan. The

rates for Teachers and State Employees, State Law Enforcement Officers, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan.

(c) The State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 1990-91 fiscal year are (i) eleven and seventy-four hundredths percent (11.74%) - Teachers and State Employees; (ii) sixteen and seventy-four hundredths percent (16.74%) - State Law Enforcement Officers; (iii) eight and twenty-seven hundredths percent (8.27%) - University Employees' Optional Retirement Program; (iv) thirty-one and thirty-six hundredths percent (31.36%) - Consolidated Judicial Retirement System; and (v) thirty-eight and eighty-five hundredths percent (38.85%) - Legislative Retirement System. Each of the foregoing contribution rates includes one and sixty-five hundredths percent (1.65%) for hospital and medical benefits. The rate for State Law Enforcement Officers includes five percent (5%) for the Supplemental Retirement Income Plan. The rates for Teachers and State Employees, State Law Enforcement Officers, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan.

(d) The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 1989-90 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare eligible employees and retirees - $954.00; and (ii) Non-Medicare eligible employees and retirees - $1,253.

(e) The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 1990-91 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare eligible employees and retirees - $986.00; and (ii) Non-Medicare eligible employees and retirees - $1,295.

Requested by: Senator Royall, Representative Diamont

-----STUDY OF MEDICAL, DISABILITY, DEATH, RETIREMENT, AND RELATED BENEFITS PROVIDED BY FEDERAL, STATE, AND LOCAL GOVERNMENTS FOR FIREMEN

Sec. 43. Of the funds appropriated to the General Assembly in Section 3 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, the sum of $5,000 for the 1989-90 fiscal year and the sum of $5,000 for the 1990-91 fiscal year shall be used by the Legislative Research Commission to study, with

the staff assistance of the Legislative Services Office and the Department of Insurance, the receipt and disposition of premium taxes levied by the State on fire and lightning insurance policies issued within the State in accordance with Articles 1 and 2 of Chapter 118 of the North Carolina General Statutes. This study shall include, but not be limited to, the amount of premium tax receipts and earnings thereon maintained by trustees, the coordination of medical, disability, death, retirement, and related benefits provided by trustees with similar benefits provided in the course of a fireman's employment or otherwise provided by the State of North Carolina or agencies of the United States, and eligibility requirements administered by trustees for firemen's receipt of the foregoing types of benefits. The study shall also include a review of the revenue collections on other premium taxes levied by the State on fire and lightning insurance policies issued within the State in accordance with Article 8B of Chapter 105 of the North Carolina General Statutes, in comparison with the amount of General Fund and other revenues expended annually by the State for medical, disability, death, retirement, and related benefits for firemen. The Legislative Research Commission shall complete its study and make a report of its findings and recommendations to the General Assembly upon the convening of the 1991 Session of the General Assembly.

PART IX.-----BUDGET PROVISIONS

Requested by: Senator Royall, Representative Diamont

-----NO TRANSFERS BETWEEN ITEMS IN THE BUDGET

Sec. 44. G.S. 143-23(a1) reads as rewritten:

"(a1) No transfers may be made between line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or other spending agency may spend more than was appropriated for a line item if the overexpenditure is:

(1) In a program for which funds were appropriated for that fiscal period and the total amount spent for the program is no more than was appropriated for the program for the fiscal period;

(2) Required to continue a program because of unforeseen events, so long as the scope of the program is not increased;

(3) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;

(4) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or

(5) Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office the reason if the amount expended for a program is more than the amount appropriated for it from all sources.

Funds appropriated for salaries and wages may only be used for salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, contracted personal services, moving expenses, payment of accumulated annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments: provided, however, funds appropriated for salaries and wages may also be used for purposes for which over expenditures are permitted by subdivisions (3), (4), and (5) of this subsection but the Director of the Budget shall include such use and the reason for it in his quarterly report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office. ~~Salary~~ Lapsed salary funds that become available from vacant positions may not be used for new permanent employee positions or to raise the salary of existing employees.

As used in this subsection, 'program' means a group of expenditure and receipt line items for support of a specific budgeted activity outlined in the certified budget for each department, agency, or institution, as designated by the four-digit fund (purpose) number in the Budget Preparation System.

The requirements in this section that the Director of the Budget report to the Joint Legislative Commission on Governmental Operations shall not apply to expenditures of receipts by entities that are wholly receipt supported, except for entities supported by the Wildlife Resources Fund."

Requested by: Representative Diamont

-----LIMIT ON NUMBER OF STATE EMPLOYEES

Sec. 45. G.S. 143-47.15 is repealed.

Sec. 46. (a) Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-10.2. Limit on number of State employees.*

The total number of permanent State funded employees, excluding employees in the State's public school system funded by way of State aid to local public school units, shall not be increased by the end of any State fiscal year by a greater percentage than the percentage rate of the residential population growth for the State of North Carolina. The percentage rates shall be computed by the Office of State Budget

and Management. The population growth shall be computed by averaging the rate of residential population growth in each of the preceding 10 fiscal years as stated in the annual estimates of residential population in North Carolina made by the United States Census Bureau. The growth rate of the number of employees shall be computed by averaging the rate of growth of State employees in each of the preceding 10 fiscal years as of July 1 of each fiscal year as stated in the State Budget."

(b) The substance of subsection (a) of this section shall be studied by the Commission on the Future of Education if that Commission is created by act of the General Assembly.

Requested by: Senator Royall, Representative Diamont
-----EXPENDITURE OF FUNDS

Sec. 47. G.S. 143-16.3 reads as rewritten:

"*§ 143-16.3. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.*

Notwithstanding any other provision of law, no funds from any source, except for ~~gifts and grants,~~ gifts, grants, and funds allocated from the Contingency and Emergency Fund by the Council of State, may be expended for any purpose for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period. For the purpose of this section, the General Assembly has considered a purpose when that purpose is included in a bill or petition or when any committee of the Senate or the House of Representatives deliberates on that purpose."

Requested by: Senator Royall, Representative Diamont
-----PERMIT DEVIATIONS FROM CERTAIN PROVISIONS OF THE EXECUTIVE BUDGET ACT

Sec. 48. Sections 156 through 160 of Chapter 479 of the 1985 Session Laws, as amended, do not apply to the extent that the Director of the Budget finds that compliance is impossible and that deviation is necessary because of complications in the budget process that were not contemplated when the budget for the 1989-91 fiscal biennium was enacted.

The Director of the Budget shall report, on a monthly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on any deviations from Sections 156 through 160 of Chapter 479 of the 1985 Session Laws, as amended, and the reasons it was impossible to comply.

This section does not authorize deviations from Sections 156 through 160 of Chapter 479 of the 1985 Session Laws, as amended, to combine fund codes.

Requested by: Senator Royall, Representative Diamont
-----FEE REPORTING REQUIREMENT

Sec. 49. G.S. 143-11 reads as rewritten:

"*§ 143-11. Survey of departments.*

On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend funds as hereinbefore defined, in the interest of economy and efficiency, and a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receive or may receive for use and expenditure any State funds as hereinbefore defined, in accordance with the classification adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each item of the proposed expenditures, the budget shall show in separate parallel columns the amount expended for the last preceding appropriation year, for the current appropriation year, and the increase or decrease. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital outlays.

The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing

biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) State Controller reports including:

~~(a)~~a. An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.

~~(b)~~b. A statement of special funds.

~~(c)~~c. A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two appropriation years.

(3) A report on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year, the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix.

The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget."

Requested by: Senator Royall, Representative Diamont

-----CONTINGENCY AND EMERGENCY FUND ALLOCATION

Sec. 50. Of the funds appropriated to the Contingency and Emergency Fund in Section 3 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, the sum of $900,000 for the 1989-90 fiscal year and the sum of $900,000 for the 1990-91 fiscal year shall be designated for emergency allocations, which are for the purposes outlined in G.S. 143-23(a1)(3), (4), and (5). The sum of $225,000 for the 1989-90 fiscal year and the sum of $225,000 for the 1990-91 fiscal year shall be designated for other allocations from the Contingency and Emergency Fund.

Requested by: Senator Royall, Representative Diamont
-----PRIVATE LICENSE TAGS ON STATE-OWNED CARS AUTHORIZED

Sec. 51. (a) Pursuant to the provisions of G.S. 14-250, for the 1989-91 fiscal biennium, the General Assembly authorizes the use of private license tags on State-owned motor vehicles only for the State Highway Patrol and for the following:

Department	Exemption Category	Number
Motor Vehicles	License and Theft	97
Justice	SBI Agents	277
Correction	Probation/Parole Surveillance Officers (intensive probation)	25
Crime Control and Public Safety	ALE Officers	92

(b) The 92 ALE vehicles authorized by this section to use private license tags shall be distributed as follows:

(1) 54 among Agent I officers;
(2) 20 among Agent II officers;
(3) 1 to the Deputy Director;
(4) 12 to the District Offices/Extra Vehicles; and
(5) 5 to the Director, to be distributed at his discretion.

(c) Except as provided in this section, all State-owned motor vehicles shall bear permanent registration plates issued under G.S. 20-84.

Requested by: Senator Royall, Representative Diamont
-----RESERVE FOR LOCAL TAX REIMBURSEMENTS

Sec. 52. (a) There is created in the Department of Revenue a special reserve to be known as the Local Government Tax Reimbursement Reserve. Funds in the Reserve shall be used to reimburse local governments for certain reductions in tax revenue resulting from tax legislation enacted by the General Assembly. There is appropriated from the General Fund to the Local Government Tax Reimbursement Reserve $231,755,615 for the 1989-90 fiscal year and $234,093,897 for the 1990-91 fiscal year. The Department of Revenue shall distribute the funds appropriated to the Local Government Tax Reimbursement Reserve for the 1989-90 and 1990-91 fiscal years as follows:

(1) The sum of $5,366,497 for the 1989-90 fiscal year and the sum of $5,618,722 for the 1990-91 fiscal year shall be used as needed to reimburse local governments, in accordance with G.S. 105-164.44C, for the impact of the exemption of food stamp purchases from sales tax under Chapter 656 of the 1985 Session Laws.

(2) The sum of $5,439,102 for the 1989-90 fiscal year and the sum of $5,874,231 for the 1990-91 fiscal year shall be used to reimburse local governments, in accordance with the second sentence of the third paragraph of G.S. 105-213(a), for the impact of the intangibles tax exemption of certain accounts and accounts receivable under Chapter 656 of the 1985 Session Laws.

(3) The sum of $24,902,468 for the 1989-90 fiscal year and the sum of $25,496,225 for the 1990-91 fiscal year shall be used to reimburse local governments, in accordance with G.S. 105-213.1, for the impact of the intangibles tax exemption of money on deposit and money on hand under Chapter 656 of the 1985 Session Laws.

(4) The sum of $107,973,963 for the 1989-90 fiscal year and the sum of $107,973,963 for the 1990-91 fiscal year shall be used to reimburse local governments, in accordance with G.S. 105-275.1 as enacted by Chapter 622 of the 1987 Session Laws and rewritten by Chapters 813 and 1041 of the 1987 Session Laws, for the impact of the property tax exemption for inventories of manufacturers and for livestock, poultry, and feed under Chapters 622, 813, and 1041 of the 1987 Session Laws.

(5) The sum of $80,373,585 for the 1989-90 fiscal year and the sum of $81,445,756 for the 1990-91 fiscal year shall be used to reimburse local governments, in accordance with G.S. 105-277A as rewritten by Chapters 622, 813, and 1041 of the 1987 Session Laws, for the impact of the property tax exemption for inventories of wholesalers and retailers under Chapter 656 of the 1985 Session Laws and Chapter 622 of the 1987 Session Laws.

(6) The sum of $7,700,000 for the 1989-90 fiscal year and the sum of $7,685,000 for the 1990-91 fiscal year shall be used as needed to reimburse local governments, in accordance with G.S. 105-277.1A, for the impact of the expansion of the property tax homestead exemption under Chapter 1052 of the 1981 Session Laws and Chapter 656 of the 1985 Session Laws.

The amounts designated for the reimbursements are estimates. If the amount designated is insufficient to pay for any of the reimbursements provided in this section, the Department of Revenue shall draw additional funds from the Local Government Tax Reimbursement Reserve to be used to make the reimbursement. If the funds appropriated to the Reserve are insufficient to pay for the reimbursements provided in this section, the State Budget Officer shall

withhold from net collections under Article 2B of Chapter 105 of the General Statutes the remaining amount necessary to pay for the reimbursements. Funds remaining in the Local Government Tax Reimbursement Reserve at the end of each fiscal year shall revert to the General Fund.

(b) G.S. 105-164.44C reads as rewritten:

"*§ 105-164.44C. Reimbursement for sales taxes on food stamp foods and supplemental foods.*

As soon as practicable after July 1 of each year, the Secretary shall determine from available information the amount of local sales taxes that would have been collected in each county during the preceding fiscal ~~year,~~ year on foods purchased with food stamp coupons or supplemental food instruments in the county, had these foods not been exempt from tax under G.S. 105-164.13(38). The Secretary shall then distribute the amounts determined to be due each county between the county and the cities located in the county in accordance with the method by which local sales and use taxes are distributed in that county. In order to pay for the reimbursement under this section and the cost to the Department of Revenue for administering the reimbursement, the Secretary of Revenue shall draw from the Local Government Tax Reimbursement Reserve an amount equal to the amount of the reimbursement and the cost of administration."

(c) G.S. 105-213.1(d) reads as rewritten:

"(d) Source. ~~Amounts~~ Funds distributed under this section shall be ~~charged to individual income tax collections.~~ drawn from the Local Government Tax Reimbursement Reserve."

(d) G.S. 105-275.1 reads as rewritten:

"*§ 105-275.1. Reimbursement for exclusion of manufacturers' inventories and poultry and livestock.*

(a) Initial Distribution. -- On or before January 15, 1989, the governing body of each county and each city shall furnish to the Secretary a list of (i) all the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this ~~Subchapter,~~ Subchapter; (ii) all livestock and poultry and feed used in the production of livestock and poultry that was required to be listed and assessed as of January 1, 1987, and was listed on or before September 1, 1987, in the county or city under this Subchapter; ~~and~~ (iii) all the crops and other agricultural or horticultural products held for sale, whether in process or ready for sale, owned by taxpayers regularly engaged in the growth, breeding, raising, or other production of new products for sale, that were not included under subdivision (ii) above and that were required to be listed and assessed as of January 1, 1987, and were listed on or before

September 1, 1987, in the county or city under this ~~Subchapter.~~ Subchapter; and (iv) in the case of a city, all the inventories owned by manufacturers that were located as of January 1, 1987, in an area for which the city began annexation proceedings before September 1, 1987, and which became a part of the city after January 1, 1987, and before January 1, 1988. The list shall contain the value of the inventories and other items as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by manufacturers and other items described in subdivisions (ii) and (iii) above that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

On or before March 20, 1989, the Secretary shall pay to each county and city that submitted a list under this subsection an amount equal to the county or city average rate, as provided below, multiplied by the value of the inventories ~~owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city,~~ described in subdivisions (i) and (iv) above contained in the list submitted by the city or county, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

On or before March 20, 1989, the Secretary shall also pay to each county and city that submitted a list under this subsection an amount equal to the average rate, as provided below, for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in

the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

Of the funds received by each county and city pursuant to this subsection, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives funds under this subsection. The county or city shall distribute to each special district in the county or city an amount equal to the average rate for the district multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this paragraph. The Local Government Commission shall report to the 1990 General Assembly any errors it discovers in the information furnished by local governments to the Secretary as required in this subsection.

(b) Subsequent Distributions. -- As soon as practicable after January 1, 1990, the Secretary shall pay to each county and city the amount it received under subsection (a) in 1989 plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1990, the Secretary shall also pay to each county and city an amount equal to the average rate for each special district for which the county or city collected taxes in 1987, but whose tax rates were not

included in the county or city's rates, multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. Thereafter, except as provided in subsection (f), as soon as practicable after January 1 of each year, the Secretary shall distribute to each county and city the amount it received under this section the preceding year.

Of the funds received by each county and city pursuant to this subsection in 1990, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories and other items in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives the funds. The county or city shall distribute to each special district in the county or city the amount it distributed to the district in 1989 plus an amount equal to the average rate for the district multiplied by the value of the items, other than inventory, described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Each year thereafter, as soon as practicable after receiving funds under this subsection, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to the amount it distributed among such districts the previous year. ~~This distribution shall be in accordance with regulations issued by the local Government Commission.~~ The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this subsection. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently.

(c) Use. -- Funds received by a county, city, or special district under this section may be used for any lawful purpose.

(d) 'City' Defined. -- As used in this section, the term 'city' has the same meaning as in G.S. 153A-1(1).

(e) Source of Funds. -- To pay for the distribution required by this section and the cost to the Department of Revenue of making the distribution, the Secretary of Revenue shall ~~charge the collections received by the Department under Division I of Article 4 of Chapter 105 with~~ draw from the Local Government Tax Reimbursement Reserve an amount equal to the amount distributed and the cost of making the distribution.

(f) Correction of Errors. -- If the Secretary discovers that the amount or value of any inventories or other items listed by a county or city pursuant to subsection (a) of this section was overstated or understated, the Secretary shall adjust the amount to be distributed under subsection (b) as follows. For the distribution to be made in the year following discovery of the overstatement or understatement, the Secretary shall distribute to the county or city the amount it would have received under subsection (b) in 1990 if it had not overstated or understated the amount or value of any inventories or other items, plus the total amount it failed to receive in 1989 and subsequent years due to understatement of the amount or value of the inventories or other items, or minus the total amount it received in 1989 and subsequent years due to overstatement of the amount or value of the inventories or other items. Thereafter, each year the Secretary shall distribute to the county or city the amount it would have received under subsection (b) in 1990 if it had not overstated or understated the amount or value of any inventories or other items."

(e) A city affected by the amendment to G.S. 105-275.1(a) provided in this section shall submit to the Secretary of Revenue a list of the manufacturers' inventories in the annexed area as soon as practicable.

(f) G.S. 105-277A(f) reads as rewritten:

"(f) Source of Funds. The Secretary of Revenue shall pay for the distribution required by this section and the cost of making the distribution as follows:

(1) For the distribution made in 1989, the Secretary shall draw an amount equal to the amount distributed and the cost of making the distribution first from the Inventory Tax Reimbursement Fund created in Section 15.1 of the School Facilities Finance Act of 1987, until it is exhausted, and then the remainder of that amount from collections received by the Department under Division I of Article 4 of this Chapter.

(2) For distributions made in subsequent years, the Secretary shall ~~charge the collections received by the Department under Article 5 of this Chapter with~~ draw from the Local Government Tax Reimbursement Reserve for the distribution required by this section an amount equal to the amount distributed and the cost of making the distribution."

(g) G.S. 105-277.1A(f) reads as rewritten:

"(f) In order to pay for the reimbursement under this section and the cost to the Department of Revenue for administering the reimbursement, the Secretary of Revenue shall draw from the Local Government Tax Reimbursement Reserve an amount equal to the reimbursement and the cost of administration. ~~may withhold from net collections received by the Department under Article 2A and Article 2C of Chapter 105 of the General Statutes an amount equal to the reimbursement and the cost of administration.~~"

Requested by: Representative Diamont

-----TAX AMNESTY ACT/APPROPRIATIONS FOR TAX ENFORCEMENT PERSONNEL

Sec. 53. Section 11 of Chapter 557 of the 1989 Session Laws reads as rewritten:

"Sec. 11. ~~(a)~~ There is appropriated:

(1) From the Highway Fund to the Department of Revenue the sum of $117,950 for the 1989-90 fiscal year and the sum of $149,690 for the 1990-91 fiscal year; and

(2) From the General Fund to the Department of Revenue the sum of $4,953,192 for the 1989-90 fiscal year and the sum of $4,765,218 for the 1990-91 fiscal year

for additional tax enforcement personnel, support personnel, and other costs resulting from the additional tax enforcement personnel.

~~(b) Notwithstanding any other provision of this section, this section does not appropriate any funds and no funds may be expended under this section.~~"

Requested by: Representative Miller

-----INFORMATION FROM PRIVATE ORGANIZATION RECEIVING STATE FUNDS

Sec. 54. Chapter 143 of the General Statutes is amended by adding the following new section:

"*§ 143-6.1. Information from private organizations receiving State funds.*

Every private person, corporation, organization, and institution which receives, uses or expends any State funds shall use or expend

such funds only for the purposes for which such State funds were appropriated by the General Assembly or collected by the State.

Each private person, corporation, organization, and institution which uses or expends State funds in the amount of twenty-five thousand dollars ($25,000) or more annually, except when the funds are compensation for goods or services, shall file annually with the State Auditor and with the Joint Legislative Commission on Governmental Operations a financial statement in such form and on such schedule as shall be prescribed by the State Auditor, and shall furnish to the State Auditor for audit all books, records and other information as shall be necessary for the State Auditor to account fully for the use and expenditure of State funds. Each such private person, corporation, organization, and institution shall furnish such additional financial or budgetary information as shall be requested by the State Auditor or by the Joint Committee on Governmental Operations. All financial statements furnished to the State Auditor or to the Joint Legislative Commission on Governmental Operations pursuant to this section, and any audits or other reports prepared by the State Auditor, shall be public records.

The receipt, use or expenditure of State funds by a private person, corporation, organization, and institution shall not, in and of itself, make or constitute such person, corporation, organization, or institution a State agency."

PART X.-----DEPARTMENT OF PUBLIC INSTRUCTION

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----PUPIL TRANSPORTATION

Sec. 55. The Department of Public Instruction shall implement the Pupil Transportation Operational Study authorized by Section 94 of Chapter 1086 of the 1987 Session Laws. The State Board of Education shall allocate up to $400,000 of the funds appropriated for the 1989-90 fiscal year for aid to local school administrative units for pupil transportation to implement the findings of this study.

The Department shall also report its final recommendations for achieving improved efficiency and economy in the pupil transportation system to the 1990 Session of the General Assembly. These recommendations shall include incentives for encouraging cost-effective operations in local school administrative units, as provided in G.S. 115C-240(e) and G.S. 115C-246(a).

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----CHILD NUTRITION

Sec. 56. Of the funds appropriated to the Department of Public Education for the 1989-90 fiscal year for aid to local school administrative units for staff development, the State Board of Education shall allocate $280,000 to local school units for staff development of school food service personnel.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----DROPOUT PREVENTION COORDINATORS

Sec. 57. Of the funds appropriated to the Department of Public Education for aid to local school administrative units for dropout prevention, the State Board of Education shall allocate to the Department of Public Instruction up to $225,000 for the 1989-90 fiscal year and up to $225,000 for the 1990-91 fiscal year for three dropout prevention coordinators. The State Superintendent shall assign the dropout prevention coordinators to designated areas within the State and shall develop job descriptions for them.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----DROPOUT PREVENTION/IN-SCHOOL SUSPENSION

Sec. 58. Of the funds appropriated to the Department of Public Education for aid to local school administration units for the Dropout Prevention/In-School Suspension Program, the sum of $200,000 for each fiscal year of the 1989-91 fiscal biennium may be used to fund eight pilot public/private educational compacts to bring together on an ongoing basis representatives from public education, community colleges, higher education, and business and industry leaders to determine how to improve attendance, prevent dropping out of school, increase academic performance, and increase participation in higher education and the work force by at-risk students. The funds may also be used to fund eight parental involvement pilot programs, and to provide for operating costs, workshops, and committee meetings for the State Department of Public Instruction's dropout prevention staff.

The State Board of Education may adopt rules governing the use of these funds.

The State Board of Education shall report to the General Assembly on the use of these funds prior to April 1, 1991.

Requested by: Representatives J. Crawford, Tart
-----TEACHER SCHOLARSHIP LOANS

Sec. 59. Of the funds appropriated in Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, for prospective teacher scholarship loans, the Superintendent of Public Instruction may, within funds available for the operation of the Department of Public Instruction, designate up to $200,000 for the

1989-90 fiscal year and up to $200,000 for the 1990-91 fiscal year for scholarship loans to teacher assistants enrolled in accredited teacher education programs.

Requested by: Senator Chalk
-----KINDERGARTEN STUDY

Sec. 60. Of the funds appropriated for education studies by the Joint Legislative Commission on Governmental Operations in Sections 15.2, 18.2, and 19.2 of Chapter 873 of the 1987 Session Laws and not expended or unencumbered prior to July 1, 1989, the sum of $24,900 shall be allocated to the Board of Governors of The University of North Carolina for a study of the impact of kindergarten education on subsequent school performance. The study shall be carried out by the Collegium for the Advancement of Schools, Schooling, and Education at the University of North Carolina at Greensboro. The Board of Governors shall report the results of the study to the General Assembly prior to May 1, 1991.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----BASIC EDUCATION PROGRAM FUNDS

Sec. 61. Funds are appropriated in Section 3 of this act to the Department of Public Education for further implementation of the Basic Education Program in public schools. These funds will provide for the fifth and sixth years of the planned eight-year implementation schedule. The following information chart shows the major increases in State funds over the 1988-89 fiscal year.

BASIC EDUCATION PROGRAM
Basic Education Plan:

		1989-90	1990-91
1.	Additional Teachers	$ 46,735,714	$90,342,391
2.	Vocational Education Teachers	1,039,116	2,078,823
3.	In-School Suspension	-	1,726,921
4.	Instructional Support	15,477,126	39,113,549
5.	Instructional/Lab Clerical Assistants	-	17,073,432
6.	Athletic Trainer Supplement	15,000	15,000
7.	Assistant Principals - Extension of Term	-	11,166,375
8.	Asst/Associate Superintendents	-	4,767,421
9.	Clerical Assistants	6,010,484	11,637,563
10.	Supervisors	-	2,611,375

TOTAL BASIC EDUCATION PLAN	$69,277,440	$180,532,850

Requested by: Representative Cromer
-----FOREIGN LANGUAGE INSTITUTE

Sec. 62. Of the funds appropriated to the Department of Public Education for aid to local school administrative units, the State Board of Education may allocate to the Department of Public Instruction the sum of $300,000 for the 1989-90 fiscal year and the sum of $300,000 for the 1990-91 fiscal year for two positions, support expenses, and workshops to provide intensive advanced training for teachers teaching foreign languages.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----ASSISTANT PRINCIPALS

Sec. 63. Funds appropriated for assistant principals in Section 3 of this act shall be allotted to local school administrative units on the basis of months of employment. School units may employ assistant principals for 10, 11, or 12 months.

Local superintendents shall, to the extent practical, distribute these positions to schools on the basis of average daily membership.

If a local school administrative unit does not choose to employ assistant principals for more than 10 months, the unit may use the funds for summer school programs.

The Department of Public Education shall report on the use of these funds to the Chairmen of the Appropriations Committees of the Senate and the House of Representatives prior to May 1, 1990.

Requested by: Representative J. Crawford
-----COORDINATION OF DEPARTMENT OF HUMAN RESOURCES/PUBLIC INSTRUCTION PROGRAMS

Sec. 64. The Superintendent of Public Instruction shall use funds appropriated for the Department of Public Instruction for the 1989-91 fiscal biennium to employ a person to coordinate programs in the public schools and programs operated or funded through the Department of Human Resources that serve the same children.

Requested by: Representative Tart
-----REDUCE PAPERWORK

Sec. 65. (a) The State Board of Education and the Department of Public Instruction shall review requirements for reports from local school administrative units and, to the extent possible, eliminate any duplicate or obsolete reporting requirements. The State Board of Education and the Department of Public Instruction shall designate the source of the requirement for any report not eliminated.

Each local board of education shall review its local requirements for reports, including local school required reports, and, to the maximum extent possible, eliminate any duplicate or obsolete reporting requirements. Each local board of education shall designate the source of the requirement for any report not eliminated. Local boards of education shall report the results of their review to the State Board of Education prior to April 1, 1990.

The State Board of Education and the Department of Public Instruction shall jointly report the progress of their review and the reviews of local boards of education to the General Assembly prior to May 1, 1990.

(b) G.S. 115C-47(18) reads as rewritten:

"(18) To Make Rules Concerning the Conduct and Duties of Personnel. -- Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.

Prior to the beginning of each school year, each local board of education shall identify all reports, including local school required reports, that are required at the local level for the school year. No additional reports shall be required at the local level after the beginning of the school year without the prior approval of the local board of education."

(c) G.S. 115C-12 is amended by adding a new subdivision to read:

"(19) Duty to Identify Required Reports. -- Prior to the beginning of each school year, the State Board of Education shall identify all reports that are required at the State level for the school year."

(d) Subsections (b) and (c) of this section shall become effective July 1, 1989, and apply to all school years beginning with the 1990-91 school year.

Requested by: Representative J. Crawford

-----TEACHER TRAINING/LEARNING DISABLED CHILDREN

Sec. 66. (a) G.S. 115C-296(b) reads as rewritten:

"(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education shall

submit to the General Assembly not later than November 1, 1984, a plan to promote this policy. The State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The standards for approval of institutions of teacher education shall require that teacher education programs for students who do not major in special education include courses in the identification and education of children with learning disabilities."

(b) G.S. 115C-118 reads as rewritten:

"§ *115C-118. Functions.*

The centers shall have the following functions:

(1) To provide in-service training to all special education teachers and other professionals as defined by the Superintendent.

(2) To develop in kindergarten and primary grade teachers the necessary skills to detect potential special education needs and the capability to plan special educational programs.

(2a) To provide in-service training for all teachers in the identification and education of learning disabled children.

(3) To provide in-service training and consultative services to a parent or guardian of a child with special needs and to appropriate public school administrative and management personnel.

(4) To work in concert with the various local human resources agencies to the end that multiple and duplicative services provided at various times and by various agencies of the State may be obviated.

(5) To conduct an in-depth evaluation of the impact of in-service training on the delivery of services to children with special needs within the public schools on an annual basis in compliance with such rules and regulations as the Superintendent may promulgate."

Requested by: Representative J. Crawford

-----ACCREDITATION/ACCOUNTABILITY FUNDS

Sec. 67. Of the funds appropriated in Section 3 of this act for implementation of the Basic Education Program, the State Board of Education shall allocate $200,000 for the 1989-90 fiscal year and

$250,000 for the 1990-91 fiscal year to the Department of Public Instruction to implement performance standards that are part of the statewide accreditation program.

Of other funds appropriated in Section 3 of this act to the Department of Public Instruction for the 1989-90 fiscal year and the 1990-91 fiscal year, the Superintendent of Public Instruction may use up to $150,000 in each year for research and development.

Requested by: Representatives J. Crawford, Tart
-----USE OF FUNDS FOR TEACHERS

Sec. 68. Funds are appropriated to the Department of Public Education for the 1989-91 fiscal biennium for additional teacher positions to be used to expand curricular offerings in accordance with the Basic Education Program. Local boards of education shall use positions allocated to them with these funds to expand curricular offerings to those contained in the Basic Education Program at any grade level and in any of the identified curricular offerings based on the identification of local needs, priorities, and local schedules for implementing the Basic Education Program.

The local board of education may, with the approval of the State Board of Education, use the funds allocated to it for expanded curricular offerings to otherwise provide a curricular offering at that school, as called for in the Basic Education Program. The State Board of Education shall monitor the alternative uses of these funds and shall report on such uses by February 1 of each year to the President of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division.

Requested by: Representatives J. Crawford, Tart
-----PROJECT TEACH FUNDS

Sec. 69. Of the funds appropriated to the Department of Public Education for the 1989-91 fiscal biennium for aid to local school administrative units, the State Board of Education shall allocate to the Department of Public Instruction the sum of $73,000 for the 1989-90 fiscal year and the sum of $73,000 for the 1990-91 fiscal year shall be used to:

(1) Maintain the Project Teach Initiative in the Robeson, Pitt, Cumberland, Warren, Halifax, Guilford, Vance, and Northampton County Schools, and the Durham, High Point, and Greensboro City Schools; and

(2) Expand the project in at least two school systems to focus on parents of students in the seventh grade so as to involve parents in the coaching and support of promising minority young people.

Requested by: Representative Tart
-----N. C. SYMPHONY AUDIO-VISUAL FUNDS

Sec. 70. Of the funds appropriated to the Department of Public Education for the 1989-90 fiscal year for aid to local school administrative units, the State Board of Education shall allocate to the Department of Public Instruction the sum of $50,000 to develop, maintain, and update an ongoing audio-visual program and a young people's television series, for the North Carolina Symphony's statewide education outreach effort that can be used with current written materials and recordings in the school systems in all counties of the State by all six of the major orchestras operating current education programs.

Requested by: Representative Diamont
-----PRINCIPLES OF TECHNOLOGY FUNDS/DO NOT REVERT

Sec. 71. (a) Funds appropriated in prior fiscal years to provide support for a Principles of Technology demonstration program in the Northampton County, Halifax County, and Weldon City School administrative units, shall not revert at the end of the 1988-89 fiscal year but shall remain available for expenditure until June 30, 1991.

(b) This section shall become effective June 30, 1989.

Requested by: Representatives J. Crawford, Tart
-----MODEL TEACHER EDUCATION CONSORTIUM

Sec. 72. (a) There is established a model teacher education consortium for the following local school administrative units: Granville County, Halifax County, Northampton County, Vance County, Warren County, Roanoke Rapids City and Weldon City, with the collaboration of East Carolina University, Elizabeth City State University, Atlantic Christian College, North Carolina Wesleyan College, Halifax Community College, and Vance-Granville Community College.

(b) The consortium shall develop a teacher education program in accordance with the requirements of the North Carolina Administrative Code, Title 16, Section .0206 and shall, upon development of the program, apply to the State Board of Education for approval as a teacher education program. The Department of Public Instruction shall assist the consortium in developing the program and shall act upon the application of the program in accordance with Title 16, Section .0206 and the Department of Public Instruction's Standards for Organizing and Implementing Consortium-Based Teacher Education.

(c) The consortium's teacher education program shall be designed to serve persons interested in becoming certified teachers in

North Carolina's public schools, or in upgrading or refining skills for employment in the public schools, or in expanding areas of certification in keeping with established standards. The initial thrust of the program shall be to qualify for certification teachers who already have college degrees but are not certified or need additional areas of certification and to provide a teacher education program for qualified teacher assistants. Special emphasis shall be placed on recruiting minority participants.

(d) The consortium's Policy Board, developed in accordance with the Standards for Organizing and Implementing Consortium-Based Teacher Education, shall establish a monetary value for the individualized education program of each participant, and shall enter an agreement with each participant for the repayment of that amount on terms specified in the agreement. The agreement shall provide for forgiveness of the repayment on a plan modeled after G.S. 115C-471.

(e) The consortium shall seek foundation, business, industry, and local school administrative unit support for 1989-90 and subsequent fiscal years.

(f) Of the funds appropriated to the Department of Public Education in Section 3 of this act for aid to local school administrative units, the State Board of Education shall use up to $50,000 for the 1989-90 fiscal year for the consortium established by this section. No more than one-half of the monies for the 1989-90 fiscal year shall be used for administrative purposes. The remainder shall be used to provide instructional support for the participants under the plan devised by the policy board.

Requested by: Representative Nesbitt

-----ASSIGNMENT OF PRINCIPALS TO SMALLER SCHOOLS

Sec. 73. (a) If a principal paid with State funds is reassigned to a lower job classification because he is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the State shall pay only the pay level the principal would have earned had he served his entire career as a principal at the lower job classification.

(b) This section applies to all transfers on or after the ratification date of this act, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this section for one calendar year following the date of the merger.

Requested by: Representative J. Crawford

-----EXISTING CAREER DEVELOPMENT PILOT PROGRAMS

Sec. 74. (a) Notwithstanding the provisions of Article 24B of Chapter 115C of the General Statutes or any other provision of law, funding for the career development pilot projects shall continue through the 1989-90 fiscal year: Provided, however, that any additional compensation received by an employee as a result of the unit's participation in the pilot program for the 1989-90 fiscal year and for subsequent fiscal years shall be paid as a bonus or supplement to the employee's regular salary.

(b) If an employee in a career development pilot unit is recommended for Career Status I or II and that status is approved by the local board of education prior to the beginning of the 1989-90 school year, the local board of education may pay that employee a bonus or supplement to his regular salary. For the 1989-90 fiscal year only, the local board of education may use any State career development funds available to it to pay these bonuses or supplements.

(c) Effective at the beginning of the 1989-90 school year, an employee may be considered for Career Status II no earlier than his third year in Career Status I: an employee may be considered for Career Status III no earlier than his third year in Career Status II.

Requested by: Representative Nesbitt

-----EXISTING LEAD TEACHER PILOT PROGRAMS

Sec. 75. The State Board of Education shall use up to $250,000 of the funds appropriated for the 1989-90 fiscal year for the Career Development Pilot Program to continue the existing Lead Teacher Pilot Programs.

Requested by: Senator Ward

-----REDUCTION OF VANDALISM IN THE PUBLIC SCHOOLS

Sec. 76. Of the funds appropriated to the Department of Public Education for the operation of the Department of Public Instruction, the Department of Public Instruction may use up to $80,000 for the 1989-90 fiscal year and up to $80,000 for the 1990-91 fiscal year for salaries and support costs to develop plans and procedures to reduce vandalism of public school facilities.

Requested by: Senator Ward

-----PRELIMINARY SCHOLASTIC APTITUDE TEST OPPORTUNITIES ENCOURAGED

Sec. 77. (a) Article 10A of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 3. Preliminary Scholastic Aptitude Test Opportunities Encouraged.

"*§ 115C-174.18. Opportunity to take Preliminary Scholastic Aptitude Test.*

Every student in the eighth through tenth grades who has completed Algebra I or who is in the last month of Algebra I shall be given an opportunity to take a version of the Preliminary Scholastic Aptitude Test (PSAT) one time at State expense. The State Board of Education shall contract with the College Board for the tests and for comprehensive diagnostic information to accompany PSAT score reports.

"*§ 115C-174.19. Reports and recommendations.*

The Superintendent of Public Instruction shall report biennially to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives on the effect of the implementation of this Part, and shall make such recommendations for modification or revision as he deems appropriate and necessary."

(b) The State Board of Education shall allocate up to three hundred sixty-five thousand dollars ($365,000) of the funds available for aid to local school administrative units for the 1989-90 fiscal year and up to three hundred ninety-six thousand dollars ($396,000) of the funds available for aid to local school administrative units for the 1990-91 fiscal year to implement subsection (a) of this section. For each year of the biennium, no more than five percent (5%) of these funds may be used for administration of the program by the Department of Public Instruction.

Requested by: Senator Ward

-----ADMINISTRATION OF DEPARTMENT OF PUBLIC INSTRUCTION BUDGET

Sec. 78. (a) G.S. 115C-21 reads as rewritten:

"*§ 115C-21. Powers and duties generally.*

(a) Administrative Duties. -- It shall be the duty of the Superintendent of Public Instruction:

(1) To organize and establish a Department of Public Instruction which shall include such divisions and departments as are necessary for supervision and administration of the public school ~~system.~~ system, to administer the funds for the operation of the Department of Public Instruction, and to enter into contracts for the operations of the Department of Public Instruction.

(2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by his personal appearance at public gatherings, and by information furnished to the press of the State.

(3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for such changes in the school law as shall occur to him.

(4) To have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction.

(5) To have under his direction, in his capacity as the constitutional head of the public school system, all those matters relating to the supervision and administration of the public school system.

(b) Duties as Secretary to the State Board of Education. -- As secretary, under the direction of the Board, it shall be the duty of the Superintendent of Public Instruction:

(1) To administer through the Department of Public Instruction, all policies established by the Board.

(1a) To administer the funds appropriated to the Department of Public Education for the operations of the State Board of Education and for aid to local school administrative units.

(2) To keep the Board informed regarding developments in the field of public education.

(3) To make recommendations to the Board with regard to the problems and needs of education in North Carolina.

(4) To make available to the public schools a continuous program of comprehensive supervisory services.

(5) To collect and organize information regarding the public schools, on the basis of which he shall furnish the Board such tabulations and reports as may be required by the Board.

(6) To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the Board.

(7) To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the name of the Board. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts of the Board required to be in writing and under seal, shall be executed in the name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be

had as provided by law for the proof of corporate instruments.

(8) To attend all meetings of the Board and to keep the minutes of the proceedings of the Board in a wellbound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and, as soon thereafter as possible, to furnish to each member of the Board a copy of said minutes.

(9) To perform such other duties as the Board may assign to him from time to time."

(b) Of the funds appropriated in the Current Operations Appropriations Act of 1989 and in this act to the Department of Public Education for the 1989-91 fiscal biennium, the funds for the operation and maintenance of the Department of Public Instruction, for State aid to nonstate agencies, and for the operation of the State Board of Education are as follows:

DEPARTMENT OF PUBLIC EDUCATION
TOTAL REQUIREMENTS

1989-90

FUND	Department of Public Instruction	Aid to Local School Administrative Units	State Board of Education
xxxx	(750,000)	--	--
1000	3,111,801	--	149,329
1100	11,162,654	--	--
1200	7,219,708	--	--
1300	14,502,317	--	--
1400	11,748,276	--	--
1500	6,315,195	--	--
1600	7,979,324	--	18,000
1700	183,744	312,511,180	--
1800	--	2,910,440,208	12,994
1900	587,455	--	--
TOTAL	62,060,474	3,222,951,388	180,323

1990-91

FUND	Department of Public Instruction	Aid to Local School Administrative Units	State Board of Education

xxxx	(1,500,000)	--	--
1000	3,128,081	--	149,329
1100	11,177,977	--	--
1200	7,337,666	--	--
1300	14,538,316	--	--
1400	16,008,769	--	--
1500	6,319,109	--	--
1600	7,990,552	--	18,000
1700	183,744	320,840,726	--
1800	--	3,036,361,143	12,994
1900	599,673	--	--
TOTAL	65,783,887	3,357,201,869	180,323

PART XI.-----DEPARTMENT OF COMMUNITY COLLEGES

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----TUITION INCREASE

Sec. 79. The State Board of Community Colleges shall adopt tuition rates beginning in the fall quarter of 1989 in the amount of ninety dollars ($90.00) per quarter for in-State students and eight hundred forty dollars ($840.00) per quarter for out-of-State students.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----ACCOUNTABILITY AND FLEXIBILITY

Sec. 80. The State Board of Community Colleges shall develop a "Critical Success Factors" list to define statewide measures of accountability for all community colleges. Each college shall develop an institutional effectiveness plan, tailored to the specific mission of the college. This plan shall be consistent with the Southern Association of Colleges and Schools criteria and provide for collection of data as required by the "Critical Success Factors" list. The Department of Community Colleges shall provide assistance to the colleges in developing their institutional effectiveness plans.

To maximize the opportunity for each college to achieve its institutional effectiveness plan, the State Board shall develop policies that allow maximum budget flexibility. However, in no instance shall the system budget have transfers greater than five percent (5%) from salaries to other costs and from instruction to administration. Nevertheless, it is the intent of the General Assembly that each community college strive to attain the average monthly salary paid in the Southern Regional Education Board (SREB) states for community colleges. There shall be no limitations on transfers from

administration to instruction or from other cost to salaries. No transfers shall be made from literacy or community services programs. It is the intent of the General Assembly that in no instance shall excess fringe benefit funds be used to increase the salaries of administrators.

The State Board shall promote and encourage local flexibility, creativity, and ingenuity in the pursuit of educational goals of the Community College System.

The State Board shall report semiannually to the Joint Legislative Commission on Governmental Operations on the progress of the "Critical Success Factors" list and on the institutional effectiveness plans.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----FULL-TIME EQUIVALENT TEACHING POSITIONS/COMMUNITY COLLEGES

Sec. 81. For the purpose of determining the community college system-wide number of full-time equivalent (FTE) teaching positions each year, the total curriculum full-time equivalent student enrollment shall be divided by 21, and occupational extension full-time equivalent student enrollment shall be divided by 22.

Requested by: Representatives J. Crawford, Tart
-----FOCUSED INDUSTRIAL TRAINING PROGRAM

Sec. 82. Notwithstanding the provisions of G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the Department of Community Colleges the sum of $500,000 for the 1989-90 fiscal year and the sum of $500,000 for the 1990-91 fiscal year to continue the Focused Industrial Training Program administered by the Department of Community Colleges.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----RETOOLING FOR THE YEAR 2000: GAINING THE COMPETITIVE EDGE

Sec. 83. (a) Of the funds appropriated to the Department of Community Colleges in Section 3 of this act, the sum of $5,000,000 for the 1989-90 fiscal year and the sum of $10,000,000 for the 1990-91 fiscal year shall be used by the State Board of Community Colleges in initiating the retooling of the Community College System, as provided in subsection (b) of this section.

(b) Chapter 115D of the General Statutes is amended by adding a new section to read:

"*§ 115D-8. 'Retooling for the year 2000: Gaining the Competitive Edge.'*

(a) The State Board of Community Colleges shall adopt a Community College Education Blueprint not inconsistent with the Commission on the Future Report on the North Carolina Community College System, 'Gaining the Competitive Edge', which will allow the State to compete successfully in the national and global economy of today and the next century. The State Board shall implement the Education Blueprint for community colleges within funds appropriated for that purpose by the General Assembly. It is the goal of the General Assembly that by July 1, 1993, the community colleges be fully funded to retool for the year 2000 in order to support the State in gaining the competitive edge.

(b) The Community College Education Blueprint shall define the programs necessary to provide every community college student access to quality teaching and academic support services by addressing the following:

(1) Exemplary faculty and staff.

(2) Effective learning experiences.

(3) Educational advancement for all adult learners.

(4) Expanded access to adult education.

(c) The Community College Education Blueprint shall establish effective mechanisms to promote accountability and increased flexibility in funding and shall address the following:

(1) Flexible funding tied to performance.

(2) Strategic goal setting and assessment.

(3) Channels for outside assessment.

(4) Efficient resource distribution.

(d) The Community College Education Blueprint shall provide opportunities for all adult North Carolinians to master the basic critical thinking skills demanded in a complex and competitive economy by addressing the following:

(1) A work force with comprehensive basic skills.

(2) Reduction of the basic skills gap.

(3) Performance based education for the underskilled.

(e) The Community College Education Blueprint shall set forth methods to help business and industry adapt to technological change and promote small business development throughout the State by addressing the following:

(1) Workplaces with competitive technology.

(2) Job creation through expanded entrepreneurship.

(f) The Community College Education Blueprint shall set forth ways to build strong partnerships with the public schools and the State's universities to establish a comprehensive, integrated education system in North Carolina.

(g) The Community College Education Blueprint shall provide for strong leadership for the future of the system and its colleges by addressing the following:

(1) Visionary leadership for the future.

(2) Responsive governance and management."

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----LITERACY ALLOCATION BASIS

Sec. 84. Literacy education funds, as defined by the State Board of Community Colleges, shall be expended only for literacy education and for no other purposes. The Department of Community Colleges shall distribute literacy funds on the basis of a formula that provides for equitable treatment of all colleges. The formula shall encompass incentives and rewards for improvement in literacy education. This revised formula shall include a base allotment, a target population of individuals between 16 and 54 years of age with less than a high school education, consideration of past performance in literacy education based on prior years' FTE earnings, an amount for each GED and Adult High School diploma awarded, and a reward for serving a higher percentage of the population to be served than the statewide average. Literacy FTE shall be reported on a contact hour basis.

Notwithstanding G.S. 150B-13, the State Board of Community Colleges may, until six months from the effective date of this act, adopt temporary rules for college formula allocations without prior notice or hearing or upon any abbreviated notice or hearing the State Board of Community Colleges finds practicable. The State Board of Community Colleges shall begin normal rule-making procedures on permanent rules in accordance with Article 2 of Chapter 150B at the same time it adopts a temporary rule as authorized under this section. Temporary rules adopted under this section shall be published by the Director of the Office of Administrative Hearings in the North Carolina Register and shall be effective for a period of not longer than 180 days.

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----NORTH CAROLINA EMPLOYERS CHARGED IN-STATE TUITION

Sec. 85. G.S. 115D-39 reads as rewritten:

"§ *115D-39. Student tuition and fees.*

The State Board of Community Colleges shall fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Community Colleges.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and 116-143.3, shall apply to students attending institutions operating pursuant to this ~~Chapter.~~ Chapter; provided, however, that when an employer other than the armed services, as that term is defined in G.S. 116-143.3, pays tuition for an employee to attend an institution operating pursuant to this Chapter and when the employee works at a North Carolina business location, the employer shall be charged the in-State tuition rate."

Requested by: Representatives J. Crawford, Tart
-----LITERACY TRANSPORTATION

Sec. 86. Community college literacy education funds may be used for transportation to literacy programs.

The State Board of Community Colleges and the State Board of Education shall develop pilot projects to allow the public school transportation system, including the Transportation Management System, to provide transportation for students in literacy programs.

The State Board of Community Colleges shall adopt rules governing the use of equipment funds for the purchase of vehicles for the transportation of students to literacy and other instructional programs.

Requested by: Senator Taft
-----EQUINE INSTRUCTION/MARTIN COMMUNITY COLLEGE

Sec. 87. Notwithstanding any other provision of law, the Board of Trustees of Martin Community College may permit students under 16 years of age to participate in equine instruction at the college on a self-supporting basis. These students may not be included in the computation of budget full-time equivalent student enrollment for the college.

Requested by: Representatives Tart, J. Crawford
-----TUITION/PUBLIC SCHOOL STUDENTS TAKING COMMUNITY COLLEGE COURSES

Sec. 88. High school students enrolled in a community college in accordance with G.S. 115D-20(4) and G.S. 115D-5 shall be exempt from tuition for community college courses taken in accordance with these two sections.

Requested by: Representatives Tart, J. Crawford
-----COMMUNITY COLLEGE REPORTS

Sec. 89. (a) The State Board of Community Colleges shall review all the reports it requires local community colleges to submit. Except as otherwise provided by federal law, the Board shall eliminate the requirements for all reports that it determines to be duplicative or otherwise unnecessary.

(b) Local community college boards of trustees shall review all reports required of community college personnel by the local president or local board of trustees.

PART XII.-----COLLEGES AND UNIVERSITIES

Requested by: Senator Ward. Representatives J. Crawford, Tart
-----UNIVERSITY OF NORTH CAROLINA HOSPITALS AT CHAPEL HILL/NURSING

Sec. 90. Notwithstanding the provisions of G.S. 126-4(1), G.S. 126-4(2), and Section 9 of Chapter 738 of the 1987 Session Laws, as amended by Section 100(a) of the 1987 Session Laws, and as further amended by Section 54 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, the Board of Directors of the University of North Carolina Hospitals at Chapel Hill shall establish policies and rules governing the performance of competitive position classification studies and competitive compensation plan studies and the implementation of competitive classification and compensation plans for clinical nursing employees. These plans shall provide for minimum, maximum, and intermediate rates of pay, and may include provisions for range revisions and shift premium pay and for salary adjustments to address internal inequities and job performance. The Office of State Personnel shall review the classification and compensation plans on an annual basis, and all changes in compensation plans for clinical nursing employees shall be submitted to the Office of State Personnel upon implementation.

Requested by: Senator Royall
-----NORTH CAROLINA SCHOOL OF SCIENCE AND MATHEMATICS

Sec. 91. Of the funds appropriated in Section 3 of this act to the Board of Governors of The University of North Carolina for the North Carolina School of Science and Mathematics, the sum of $201,000 for the 1989-90 fiscal year and the sum of $302,000 for the 1990-91 fiscal year shall be used for the implementation of a salary plan for the faculty of the school.

Requested by: Senator Taft
-----ECU MEDICARE REIMBURSEMENT

Sec. 92. (a) Effective July 1, 1989 funds appropriated to the Board of Governors of The University of North Carolina for the East Carolina University School of Medicine for Medicare education shall be allocated as follows:

(1) That portion of the Medicare reimbursement that can be identified as having been generated through the effort and at the expense of the School's Medical Faculty Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School; and

(2) The remainder shall be transferred to a special nonreverting account within the School.

Funds deposited in the account pursuant to subdivision (2) of this section shall be spent for nonrecurring items of equipment and facilities that are required to maintain the School of Medicine's teaching facilities within Pitt County Memorial Hospital and the Brody Medical Sciences Building.

(b) All revenue heretofore or subsequently received by the East Carolina University School of Medicine Medical Faculty Practice Plan from patients or their health insurance companies for treatment received in the Radiation Therapy Facility shall be retained by the School's Medical Faculty Practice Plan and used to defray current operating expenses and for future support and enhancement of the facility.

(c) This section shall expire June 30, 1991.

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----AID TO PRIVATE COLLEGES INCREASE/PROCEDURE

Sec. 93. Section 30 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, reads as rewritten:

"Requested by: Senator Ward, Representatives J. Crawford, Tart

-----AID TO PRIVATE COLLEGES ~~PROCEDURE~~ INCREASE/PROCEDURE

Sec. 30. (a) Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22. These funds shall provide up to ~~four hundred dollars ($400.00)~~ four hundred fifty dollars ($450.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each year.

These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a

scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be for the tuition grant program as defined in subsection (b) of this section.

(b) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, the sum of one thousand one hundred fifty dollars ~~($1,100)~~ ($1,150) per academic year, which shall be distributed to the student as hereinafter provided.

The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority may not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at such times as it shall prescribe the grant to the approved institution on behalf, and to the credit, of the student.

In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the 10th classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

In the event there are not sufficient funds to provide each eligible student with a full grant:

(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and

(2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

Any remaining funds shall revert to the General Fund.

(c) Expenditures made pursuant to this section may be used only for secular educational purposes at nonprofit institutions of higher learning."

Requested by: Representatives J. Crawford, Tart
-----ACCOUNTABILITY

Sec. 94. The Board of Governors of The University of North Carolina shall require each institution to develop a plan that would exhibit how the institution will measure its effectiveness, especially in the areas of student learning and development, faculty development and quality, and progress toward the institution's missions. Each plan shall include information concerning the institution's goals to improve and maintain its quality in these areas. The plans shall provide for annual assessments and for reporting these assessments to the Board of Governors and to the General Assembly. The Board shall identify a number of assessment measures that shall be required on all campuses to insure systemwide assessment.

These plans shall be developed and submitted to the General Assembly by January 15, 1991.

Requested by: Representative Colton
-----FINANCIAL AID FOR POST-SECONDARY EDUCATION FOR PART-TIME STUDENTS

Sec. 95. (a) The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall adopt rules to ensure that students at any of the constituent institutions of The University of North Carolina and at any of the campuses of the Community College System who are part-time students enrolled for at least three credit hours a semester or quarter in academic programs are eligible for State-funded need-based scholarship assistance.

(b) This section shall expire June 30, 1991.

Requested by: Representatives J. Crawford, Tart
-----TEACHER TASK FORCE RECOMMENDATIONS/FUNDS

Sec. 96. (a) The State Board of Education and the Board of Governors of The University of North Carolina shall implement the objectives of the plan for the preparation of teachers as identified in "The Education of North Carolina Teachers" report and in the "Second Annual Report of the Joint Committee on Teacher Education of the Board of Governors of The University of North Carolina and the State Board of Education."

(b) Of the funds appropriated to the Department of Public Education in Section 3 of this act the sum of $1,080,000 for the 1989-90 fiscal year, and the sum of $1,080,000 for the 1990-91 fiscal year shall be used by the State Board of Education to carry out the following program components as identified in the "Second Annual Report on the Joint Committee on Teacher Education of the Board of

Governors of The University of North Carolina and the State Board of Education":

	1989-90	1990-91
Reform of Teacher Education Programs	$ 50,000	$ 50,000
Quality Assurance Program Improvement	5,000	5,000
Teacher Certification and Program Approval	850,000	850,000
Professional Education	125,000	125,000
Incentive Programs for Teachers	50,000	50,000
Total	$1,080,000	$1,080,000

(c) Of the funds appropriated to the Board of Governors of The University of North Carolina in Section 3 of this act, the sum of $1,500,000 for the 1989-90 fiscal year, and the sum of $1,700,000 for the 1990-91 fiscal year shall be used to carry out the following program components as identified in the "Second Annual Report of the Joint Committee on Teacher Education of the Board of Governors of The University of North Carolina and the State Board of Education":

	1989-90	1990-91
Reform of Teacher Education Programs	$ 424,000	$ 494,000
Quality Assurance Program Improvement	536,000	536,000
Professional Education	50,000	
Revitalization of Teacher Education Faculty	540,000	620,000
Total	$1,500,000	$1,700,000

(d) The State Board of Education and the Board of Governors of The University of North Carolina shall, through the Joint Committee on Teacher Education, continue to monitor and evaluate the implementation of the programs for the improvement of the preparation of teachers as set forth in the report, "The Education of North Carolina Teachers," and in the "Second Annual Report on the Joint Committee on Teacher Education of the Board of Governors of The University of North Carolina and the State Board of Education."

(e) The annual reports required through the evaluation and monitoring plan developed pursuant to Section 96(d) of Chapter 830 of the 1987 Session Laws shall continue as provided in that subsection and shall reflect the expenditures and evaluation findings on a fiscal year basis.

Requested by: Representatives Barnhill, Blue
-----NORTH CAROLINA A&T STATE UNIVERSITY/WESTERN CAROLINA UNIVERSITY CENTENNIAL OBSERVANCE FUNDS

Sec. 97. The Board of Governors of The University of North Carolina shall allocate for the 1989-90 fiscal year sufficient funds not to exceed $100,000 for the centennial observance at North Carolina Agricultural and Technical State University and $50,000 for the centennial observance at Western Carolina University, from overhead receipts balances held by the General Administration of The University of North Carolina.

PART XIII.-----DEPARTMENT OF TRANSPORTATION

Requested by: Senator Martin of Pitt, Representatives McLaughlin, Woodard
-----SPECIAL APPROPRIATIONS FOR HIGHWAYS

Sec. 98. Of the funds appropriated to the Department of Transportation for special appropriations for highways in Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, and in this act, sixty-six million dollars ($66,000,000) for fiscal year 1989-90 and sixty-six million dollars ($66,000,000) for fiscal year 1990-91 may be used for:

(1) Supplemental funding for highway construction, reconstruction, and rehabilitation projects for State and Federal Aid road systems;
(2) Supplemental funding for the planning, design, and engineering of highways and acquisition of highway rights-of-way;
(3) Matching funds for unanticipated federal-aid construction funds;
(4) Payment for all or any portion of the interest or principal on bonds issued by the State for road and highway purposes;
(5) A means of maintaining a uniform seasonal pace of highway construction, including scheduled ferry replacement.

Construction funds shall be allocated equitably each year among the 14 Highway Divisions. Notwithstanding any other provisions of Chapter 136 of the General Statutes, the Department shall make allocations under this section in a manner that assures that at the end of the second year each of the 14 Highway Divisions, over the two-year period, has been allocated an equal amount, insofar as possible, of all funds allocated under this section, including those for scheduled ferry replacement. The Secretary shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the projects that have

been funded, and those projects that he reasonably expects to be funded under this section. The report shall set out the reasons this method of funding serves the best interest of the State's transportation improvement programs. That report shall include, among other things, the cost savings realized, and the manner in which the cost savings have been realized by the use of the funds allocated under this section.

Requested by: Senator Martin of Pitt, Representatives McLaughlin, Woodard

-----COMMISSION PAID TO BRANCH AGENTS

Sec. 99. Section 202 of Chapter 1034 of the 1983 Session Laws (Regular Session 1984) as amended by Section 172 of Chapter 738 of the 1987 Session Laws reads as rewritten:

"Sec. 202. Section 140 of Chapter 761 of the 1983 Session Laws is amended in the last sentence by deleting the language 'sixty-four cents (64¢)' and substituting ~~'seventy-two cents (72¢)'~~ 'eighty-two cents (82¢) for fiscal year 1989-90 and ninety-two cents (92¢) thereafter'."

Requested by: Senator Martin of Pitt, Representatives McLaughlin, Woodard

-----COMMISSIONER OF MOTOR VEHICLES TO REPORT ON PRINTING AND BINDING FUNDS

Sec. 100. The Commissioner of Motor Vehicles shall report, no later than May 15, 1990, to the Chairmen of the Highway Fund Subcommittee of the Appropriations Committee of the House of Representatives and to the Chairman of the Senate Appropriations Committee on Natural and Economic Resources on the expenditure of the funds requested for printing and binding. Copies of the report mandated by this section shall also be delivered to the Chairmen of the Appropriations Committees of the House of Representatives and of the Senate and to the Fiscal Research Division of the Legislative Services Office.

Requested by: Representative Perdue

-----CONCESSIONS ON FERRIES AND AT FERRY FACILITIES

Sec. 101. G.S. 136-82 reads as rewritten:

"*§ 136-82. Department of Transportation to establish and maintain ferries.*

The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as

may, in the discretion of the Department of Transportation, be expedient.

To accomplish the purpose of this section said Department of Transportation is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Department of Transportation represent the fair value of the public service rendered.

To provide for the comfort and convenience of the passengers on the ferries established and maintained pursuant to this section, the Department of Transportation, notwithstanding any other provision of law, may operate, or contract for the operation of, concessions on the ferries and at ferry facilities to provide food, drink, other refreshments, and personal comfort items for those passengers."

Requested by: Representative Diamont
-----BRIDGE MAINTENANCE BY DEPARTMENT OF TRANSPORTATION

Sec. 102. G.S. 136-97 reads as rewritten:

"*§ 136-97. Responsibility of counties for upkeep, etc., terminated.*

(a) The board of county commissioners or other road-governing bodies of the various counties in the State are hereby relieved of all responsibility or liability for the upkeep or maintenance of any of the roads or bridges thereon constituting the State highway system, after the same shall have been taken over, and the control thereof assumed by the Department of Transportation.

(b) The Department of Transportation, as part of maintaining the highways, bridges, and watercourses of this State, shall haul all debris removed from on, under, or around a bridge to an appropriate disposal site for solid waste, where the debris shall be disposed of in accordance with law."

Requested by: Senator Martin of Pitt
-----CURRITUCK/DARE BRIDGE MAINTENANCE YARD CONSOLIDATION

Sec.103. The existing Department of Transportation Bridge Maintenance facilities in Currituck County and Dare County are declared to be surplus and the Department of Transportation shall dispose of them through the normal procedures for the disposition of real property. The proceeds shall be used for the consolidation of the Currituck County and Dare County bridge maintenance yards.

Requested by: Senator Basnight
-----NC 400 UNDER VOYAGES COMMISSION

Sec. 104. Section 7 of Chapter 1194 of the 1981 Session Laws, as amended by Chapter 673 of the 1985 Session Laws, reads as rewritten:

"Sec. 7. The word 'highway' as used in this act means U.S. Highway 64 and 264 on Roanoke Island between the William B. Umstead Memorial Bridge over Croatan Sound, the Washington Baum Bridge over Roanoke ~~Sound~~ Sound, and the highway designated by the Department of Transportation as North Carolina 400 (NC 400)."

Requested by: Senator Martin of Pitt
-----ELDERLY AND HANDICAPPED TRANSPORTATION ASSISTANCE PROGRAM

Sec. 105. (a) Of the funds appropriated in Section 6 of this act, the sum of $2,000,000 for the 1989-90 fiscal year and the sum of $2,000,000 for the 1990-91 fiscal year shall be used to provide funds for the North Carolina Elderly and Handicapped Transportation Assistance Program established under G.S. 136-44.27.

(b) Section 1(b) of Chapter 1095 of the 1987 Session Laws, Section 8 of Chapter 1101 of the 1987 Session Laws, and Section 8.2 of Chapter 1101 of the 1987 Session Laws are repealed.

PART XIV.-----DEPARTMENT OF JUSTICE

Requested by: Representative Huffman
-----REALLOCATE SBI AGENT POSITIONS

Sec. 106. Of the funds appropriated to the Department of Justice, the sum of $112,000 for the 1989-90 fiscal year and the sum of $112,000 for the 1990-91 fiscal year shall be used by the State Bureau of Investigation to support the reallocation of 87 agent positions as recommended by the Office of State Personnel.

Requested by: Senator Marvin, Representatives Huffman, Justus
-----STATE LAW ENFORCEMENT STUDY

Sec. 107. The Joint Legislative Commission on Governmental Operations shall conduct a study of State law enforcement agencies and of other State agencies having law enforcement responsibility. This study shall include:

(1) Consideration of a method to coordinate the activities of these agencies as appropriate and to reduce duplication and overlapping of law enforcement responsibilities, training, and technical assistance among State law enforcement

agencies and among other State agencies having law enforcement responsibility;

(2) Examination of the salary grade of all State law enforcement agencies' officers and a determination of whether present salary grades are appropriate; and

(3) Determination of whether G.S. 114-13 should be changed to make sworn law enforcement agents of the State Bureau of Investigation exempt from G.S. 126-7 but subject to the same salary classifications, ranges, and longevity pay for services as are applicable to other State employees generally, and whether to increase the agents' salary in an amount corresponding to the increments between steps within the salary range established for the class to which the member's position is assigned by the State Personnel Commission, not to exceed the maximum of each applicable salary range.

The Commission may hire outside consultants, if necessary, to assist in its study. The Commission may make an interim report to the 1989 General Assembly, Regular Session 1990, and may make a final report to the 1991 General Assembly.

Requested by: Senator Marvin

-----TELECOMMUNICATORS' CERTIFICATION STUDY

Sec. 108. The Department of Justice shall study the need to establish a certification requirement and program for Telecommunicators in the State's Criminal Justice System. The Department shall consider possible training requirements and standards for certification, methods, procedures, and staffing needs required to implement a telecommunicators' certification program, and whether certified telecommunicators shall be entitled to law enforcement officer retirement benefits. The Department may also study any other matters relevant to the issue of certification of telecommunicators. The Department shall report its findings and recommendations to the 1989 General Assembly, Regular Session 1990.

PART XV.-----DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Requested by: Senators Sand, Marvin

-----COMMUNITY SERVICE COORDINATOR APPOINTMENT

Sec. 109. (a) G.S. 143B-475.1(a) reads as rewritten:

"(a) The Department of Crime Control and Public Safety may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The Secretary of

Crime Control and Public Safety may assign one or more coordinators to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. The appointment of each coordinator shall be made in consultation with and is subject to the approval of the chief district court ~~judge.~~ judge in the district to which the coordinator is assigned. Each county must provide office space in the courthouse or other convenient place, for the use of each coordinator assigned to that county."

(b) G.S. 20-179.4(b) reads as rewritten:

"(b) The Secretary of Crime Control and Public Safety must assign at least one coordinator to each district court district as defined in G.S. 7A-133 to assure and report to the court the person's compliance with the community service sentence. The appointment of each coordinator shall be made in consultation with and is subject to the approval of the chief district court ~~judge.~~ judge in the district to which the coordinator is assigned. Each county must provide office space in the courthouse or other convenient place, necessary equipment, and secretarial service for the use of each coordinator assigned to that county."

Requested by: Senator Marvin

-----VICTIMS COMPENSATION PROGRAM STUDY

Sec. 110. The Office of the State Auditor shall study the costs of administering the North Carolina Crime Victims Compensation Program, established in Chapter 15B of the General Statutes, and shall submit a report to the Senate and House Appropriations Committees on Justice and Public Safety and to the Fiscal Research Division by May 1, 1990, on more cost-effective methods of administration, including the possible computerization of data. The study shall also include a review of the information obtained by the Victim Witness Coordinators, to determine if that information is acceptable for use by the Department and may relieve the Department from duplicating efforts.

Requested by: Senator Odom

-----REVIEW OF THE CIVIL AIR PATROL OPERATIONS

Sec. 111. The General Assembly requests that the Office of the State Auditor conduct a performance audit of the Civil Air Patrol administered by the Department of Crime Control and Public Safety that will address, but is not limited to, a review of the responsibilities of the supervisory personnel and the Military Board; the role of the Department of Crime Control and Public Safety in structuring the programs and activities of the Civil Air Patrol; and the use of funds

appropriated annually from the General Fund for State personnel and operating expenses.

The Office of State Auditor shall report its findings and recommendations to the Senate and House Appropriations Base Budget Committee on Justice and Public Safety by April 15, 1990.

Requested by: Senator Ballance
-----REVIEW OF NATIONAL GUARD OPERATIONS

Sec. 112. The Office of the State Auditor shall conduct, within funds available, a performance audit of the North Carolina National Guard administered by the Department of Crime Control and Public Safety that will address but is not limited to determining:

(1) The proportion of minorities that are in the National Guard, the percentage of minorities occupying positions of responsibility, and a breakdown of National Guard membership by race, sex, and rank.

(2) The procedure used by the Retention Board for officers and soldiers when they reach 20 years of service, whether these procedures are well known, and the type of information that disqualifies an individual for retention after 20 years of service.

(3) The proportion of minorities that are full-time National Guardsmen and the percentage who hold full-time leadership positions; the standard practices concerning the retention of a Guardsman who is full-time before he reaches 20 years of qualifying service with full-time employment; the proportion of full-time Guardsmen not retained prior to reaching 20 years of qualifying service with full-time benefits, and providing a breakdown of this information by race, sex, and rank.

(4) The breakdown of retirees paid from the $1.8 million transfer to the State Treasurer for retirement of National Guardsmen by rank, race, sex, and number of years for retirement purposes.

(5) Whether adequate procedures are in place for Guardsmen to report acts of discrimination, and the difficulty experienced by Guardsmen in reporting acts of discrimination through official channels.

The Office of State Auditor shall report its findings and recommendations to the Senate and House Appropriations Base Budget Committee on Justice and Public Safety by April 15, 1990.

Requested by: Senator Marvin
-----SUMMIT HOUSE FUNDS

Sec. 113. Of the funds appropriated to the Department of Crime Control and Public Safety for the 1989-90 fiscal year, $75,000 shall be used to support a pilot program at Summit House, a community-based residential alternative to incarceration for mothers and pregnant women convicted of nonviolent crimes. Summit House shall provide a quarterly report to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have their probation revoked, and the number of clients who successfully complete the program while housed at Summit House.

Requested by: Representative Anderson
-----ASSIGNMENT OF HIGHWAY PATROL CARS

Sec. 114. G.S. 20-190.3 reads as rewritten:

"*§ 20-190.3. Assignment of new highway patrol cars.*

All new highway patrol cars, whether marked or unmarked, placed in service after July 1, 1985, shall be assigned to ~~and used by troopers whose primary duties are in the field and by line sergeants and first sergeants.~~ all members of the Highway Patrol."

Requested by: Senator Marvin, Representatives Huffman, Justus
-----ADDITIONAL HIGHWAY PATROL TROOPERS

Sec. 115. (a) Funds are appropriated in Section 4 of this act to the Department of Crime Control and Public Safety for an additional 30 troopers for the Highway Patrol, 15 to be added in the 1989-90 fiscal year and 15 to be added in the 1990-91 fiscal year. These 30 troopers may not be assigned to any duty other than full-time enforcement of the traffic laws by patrolling the roads except when absence therefrom is required for court appearances, training mandated by statutes or compliance with the rules of the North Carolina Criminal Justice Education and Training Standards Commission, or administrative work directly arising out of road patrol or court appearance. Also, no additional administrative positions may be created that decrease the number of members of the Highway Patrol assigned to road patrol as essentially full-time duty. The new Highway Patrol positions created by this subsection shall be of salary grade 66.

(b) The Highway Patrol may create from salary reserve, as available, three new positions: one first sergeant, of salary grade 73, to be assigned to internal affairs, and two line sergeants, of salary grade 71, one to be assigned to the driving track.

(c) The Highway Patrol may also assign three troopers (master) to the driving track.

(d) This section is not intended to prevent the Department of Crime Control and Public Safety from assigning troopers to normal special duties to which troopers are ordinarily assigned.

PART XVI.-----DEPARTMENT OF CORRECTION

Requested by: Senators Marvin, Sands
-----REPORT ON NEED FOR TRAINING COORDINATOR POSITIONS FOR 1991-93 BIENNIUM

Sec. 116. The Department of Correction, Division of Prisons, shall not include in its continuation budget for the 1991-93 biennium funding for the six training coordinator positions authorized for the 1989-91 biennium. The Department shall submit a report by April 1, 1991, to the General Assembly and the Fiscal Research Division on the need to refund these positions in future biennia, including recommendations for the consolidation of basic and in-service training for employees of the Division of Prisons.

Requested by: Senator Marvin
-----ENGINEERING SUPPORT SECTION AUDIT

Sec. 117. (a) The Office of the State Auditor shall conduct an operational audit of the organization, functioning, and personnel of the Engineering Support Section of the Department of Correction. The audit shall address the organizational placement of the Section, staffing and procedures for carrying out assignments, and recommendations for methods of improving the efficiency of the Section.

(b) The Office of the State Auditor shall report its findings and recommendations not later than May 1, 1990, to the Chairmen of the Senate and House Appropriations Committees, the Chairmen of the House Appropriations Committees on Justice and Public Safety, the Chairmen of the Senate Appropriations Committee on Justice and Public Safety, the Special Committee on Prisons, and the Joint Legislative Commission on Governmental Operations.

Requested by: Senator Marvin, Representatives Huffman, Justus
-----SUBSTANCE ABUSE PROGRAM AND DWI PAROLE PROGRAM EVALUATIONS

Sec. 118. (a) The Department of Correction shall prepare an evaluation of the operation and results of the substance abuse program established by G.S. 143B-262(d) and G.S. 143B-264. The report shall include information on the number of inmates who have been accepted into the program, the number who have completed treatment or are presently receiving treatment through the program, the number who did not complete treatment through the program, and any follow-

up information indicating the results of the program. The Department shall submit its report not later than May 1, 1990, to the Chairmen of the Senate and House Appropriations Committees, the Chairman of the House Base Budget Appropriations Committee, the Chairman of the Senate Appropriations Committee on Justice and Public Safety, the Chairmen of the House Appropriations Committees on Justice and Public Safety, the Special Committee on Prisons, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division.

(b) The Department of Correction shall prepare an evaluation of the implementation, operation, and results of the DWI program at Cherry Hospital established in Chapter 8 of the 1989 Session Laws. The report shall include information on the number of persons who have been accepted into the program, the number who have completed treatment or are presently receiving treatment through the program, the number who did not complete treatment through the program, and any follow-up information indicating the results of the program. The Department shall submit its report not later than May 1, 1990, to the Chairmen of the Senate and House Appropriations Committees, the Chairman of the House Base Budget Appropriations Committee, the Chairman of the Senate Appropriations Committee on Justice and Public Safety, the Chairmen of the House Appropriations Committees on Justice and Public Safety, the Special Committee on Prisons, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division.

Requested by: Representative Brubaker

-----PRISONER ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) TESTING/TREATMENT

Sec. 119. (a) In order to determine the prevalence of HIV infection, all incoming inmates admitted to the Department of Correction between November 1, 1989, and April 30, 1990, shall be tested anonymously for the HIV antibody.

(b) Of the funds appropriated to the Department of Correction for the 1989-90 fiscal year, the sum of $58,200 shall be used for the HIV testing study. These funds shall be used for laboratory testing expenses to test all incoming inmates between November 1, 1989, and April 30, 1990. Of the funds appropriated to the Department of Correction for the 1989-90 fiscal year, the Department may hire, or contract for, temporary services related to this study.

(c) The Department of Correction, Division of Prisons, shall track all AIDS-related expenditures of the Department of Correction for prisoners during the 1989-90 fiscal year.

(d) The Secretary of Correction, in consultation with the State Health Director and the Attorney General, shall formulate a plan for the detection, prevention, and treatment of AIDS in the prison population. The study and resulting management plan shall address, but shall not be restricted to the following:

(1) Testing of inmates for the presence of the HIV virus;
(2) Confidentiality of test results;
(3) Segregation/nonsegregation of inmates testing positive for the HIV virus;
(4) Equal access to prison programs and facilities by inmates testing positive for the HIV virus;
(5) Treatment and counseling, before and after testing, for inmates testing positive for the HIV virus;
(6) Education of the inmate population and families of inmates testing positive for the HIV virus;
(7) Methods of preventing infection.

(e) The Department of Correction shall report the results of its study and plan for the detection, prevention, and treatment of AIDS in the prison population, the results of its blind HIV-positive seroprevalence study, and its AIDS-related expenditures for the 1989-90 fiscal year to the 1989 General Assembly by May 15, 1990.

Requested by: Representatives Huffman, Justus
-----CORRECTIONS CENTRALIZATION STUDY

Sec. 120. The House Appropriations Committees on Justice and Public Safety and the Senate Appropriations Committee on Justice and Public Safety shall study the desirability of adopting a more centralized approach to corrections in this State. The primary purpose of this study shall be a comparison of the cost of maintaining the present 89 correctional facilities across the State and the cost of building and maintaining a more regionalized system consisting of substantially fewer facilities. The study shall include:

(1) An examination of the existing correctional facilities, the anticipated lifespan of those facilities, and the projected cost of renovating them to meet acceptable standards;
(2) An estimate of the cost of constructing and maintaining new, regionalized facilities;
(3) An estimate of the reduction in personnel costs that would result from a more regionalized correctional system; and
(4) A comparison of this State's correctional system with the correctional systems of other states with comparable prison populations, including any steps those states have made to centralize their correctional systems.

The Committees may consult with the Office of State Construction, the Office of State Budget and Management, and the Office of the State Auditor in conducting their study. The Committees may request funds from the Legislative Services Commission, if necessary, to hire outside consultants to assist in this study.

The Committees shall keep the Special Committee on Prisons informed of their activities, and may submit their report by May 1, 1990, to the Special Committee on Prisons and to the 1989 General Assembly, 1990 Regular Session.

PART XVII.-----DEPARTMENT OF HUMAN RESOURCES

Requested by: Senator Walker, Representatives Duncan, L. Etheridge

-----BLOCK GRANT FAMILY PLANNING FUNDS

Sec. 121. Family planning services provided by local health departments and funded by federal block grant funds shall be continued at or above the 1988-89 fiscal year levels. In the event of federal reductions for maternal and child health-care services, family-planning services shall not be subject to reductions greater than the average for other maternal or child health program.

Requested by: Senator Walker, Representatives Duncan, L. Etheridge

-----BLOCK GRANT ADOLESCENT PREGNANCY FUNDS

Sec. 122. (a) Social Services Block Grant funds appropriated for fiscal year 1989-90 and included in Section 6 of this act shall be allocated as follows:

Swain County Cherokee Boys Club, Inc.	$30,000
Caldwell County Health Department	30,000
Robeson County Health Department	30,000
Harnett County Health Department	40,000
Buncombe County Health Department	40,000
Carteret County Community Action, Inc.	40,000
Davidson County Health Department	40,000
Greene County Health Care, Inc.	40,000
Bertie County Health Department	40,000
Scotland County Health Department	40,000
Macon County Programs for Progress	55,000
Mecklenburg County N.C. Coalition on Adolescent Pregnancy	20,000.

(b) Programs receiving funds allocated under this section shall use these funds for adolescent pregnancy prevention and prematurity prevention projects.

(c) No funds allocated under this section shall be used for purchase and prescriptions of contraceptives, nor shall contraceptives be distributed on school property under this section. None of the funds allocated under this section may be used for transportation to and from abortion services. None of the funds allocated under this section may be used for abortions. This subsection applies only to the funds allocated under this section.

(d) Each program receiving funds under this section shall be subject to the provisions of Section 91 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989.

Requested by: Senator Walker, Representatives Duncan, L. Etheridge

-----ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH SERVICES BLOCK GRANT FUNDS

Sec. 123. If additional Alcohol, Drug Abuse, and Mental Health Services Block Grant funds are made available to the State above the current levels of $14,476,000 for federal fiscal year 1989 and the projected amount of $14,167,000 for federal fiscal year 1990, the Department of Human Resources may:

(1) Allocate additional funds to mental health items in the State fiscal year 1989-90 block grant plan sufficient to restore reductions but not exceed State fiscal year 1988-89 funding levels set forth in Chapter 1086 of the 1987 Session Laws; and

(2) Budget additional block grant funds for mental health and substance abuse programs as may be necessary to meet federal Alcohol, Drug Abuse, and Mental Health Services Block Grant requirements.

Requested by: Senators Basnight, Martin of Pitt

-----EASTERN REGIONAL DETOXIFICATION FUNDS

Sec. 124. Funds appropriated to the Department of Human Resources, Division of Mental Health, Mental Retardation, and Substance Abuse Services, for the 1989-90 fiscal year and the 1990-91 fiscal year for Eastern Regional Detoxification Services shall be allocated to the Division's Eastern Regional Office and distributed to area mental health, mental retardation, and substance abuse authorities as determined by the regional management team.

Requested by: Senator Walker

-----SPECIALIZED RESIDENTIAL CENTERS' BED CONVERSIONS

Sec. 125. Funds made available as a result of the conversion of State supported beds in specialized residential centers to ICF/MR beds shall be used to increase the State subsidy provided to centers. Funds made available to centers by this section shall be used, as they become available, to increase the subsidy rate to sixty-five percent (65%) of the statewide 1988-89 average cost of providing this service.

Funds made available in addition to those needed to increase the subsidy rate shall be transferred to the Division of Medical Assistance to be used as State match for the converted ICF/MR beds.

Requested by: Senator Walker

-----STUDY OF FUNDS USED FOR LOCAL PROGRAM SALARIES

Sec. 126. The Department of Human Resources shall conduct a study of the use of funds provided under G.S. 143-10.1 for salary and salary-related items for employees in locally operated State-funded programs. The study shall include a five-year comparative analysis of the funds made available under G.S. 143-10.1 with the changes in the cost of salaries in the locally operated State-funded programs. The Department shall report its findings by May 1, 1990, to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office.

Requested by: Senator Walker, Representatives Duncan, L. Etheridge

-----THOMAS S.

Sec. 127. (a) Funds appropriated to the Department of Human Resources in Section 5 of this act for the 1989-90 fiscal year and the 1990-91 fiscal year for members of the Thomas S. class as identified in Thomas S., et al., vs. Flaherty, shall be placed in a reserve in the Division of Mental Health, Mental Retardation, and Substance Abuse Services, and shall be expended only for programs serving Thomas S. class members or for services for those clients who are likely to become class members.

(b) The Department of Human Resources shall provide periodic reports of funds expended and services performed on behalf of members of the Thomas S. class and on behalf of those clients who are likely to become class members to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office.

Requested by: Senator Walker, Representatives Duncan, L. Etheridge

-----ONE-ON-ONE PROGRAM FUNDS

Sec. 128. Of the funds appropriated in Section 5 of this act to the Department of Human Resources, Division of Youth Services, the sum of $197,250 for the 1989-90 fiscal year and the sum of $197,250 for the 1990-91 fiscal year shall be allocated as follows:

(1) $97,250 for the 1989-90 fiscal year and $97,250 for the 1990-91 fiscal year for the existing 34 local programs of the Governor's One-on-One Volunteer Program;

(2) $20,000 for the 1989-90 fiscal year and $20,000 for the 1990-91 fiscal year to allow two of the 34 programs that are currently part-time programs to be expanded to full-time programs; and

(3) $80,000 for the 1989-90 fiscal year and $80,000 for the 1990-91 fiscal year to establish and implement four new programs.

Funds allocated pursuant to this section shall not supplant or diminish funds appropriated for the Program from Social Services Block Grant funds.

Requested by: Representative Duncan

-----LIABILITY INSURANCE FOR PHYSICIANS/DENTISTS

Sec. 129. The Secretary of the Department of Human Resources and the Secretary of the Department of Correction may provide medical liability coverage not to exceed $1,000,000 on behalf of employees of the Departments licensed to practice medicine or dentistry. This coverage may include commercial insurance or self-insurance and shall cover these employees for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment.

The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Human Resources or the Department of Correction.

Requested by: Senator Walker, Representatives Duncan, L. Etheridge

-----CHILD PROTECTIVE SERVICES FUNDS

Sec. 130. (a) Of the funds appropriated to the Department of Human Resources, Division of Social Services for the 1989-90 fiscal year and for the 1990-91 fiscal year for Child Protective Services and included in Sections 3 and 5 of this act, the Division shall use up to $174,910 in the 1989-90 fiscal year and up to $174,910 in the 1990-91 fiscal year for child protective services training; and shall use up to $175,090 in the 1989-90 fiscal year and up to $175,090 in the 1990-91 fiscal year to provide consultation and technical assistance to

county departments of social services to strengthen and support local child protective services. The Division may establish one training position and four consultant positions to carry out these purposes. The remaining funds shall be allocated to the county departments of social services as follows:

(1) $10,000 for the 1989-90 fiscal year and $10,000 for the 1990-91 fiscal year shall be allocated to each of the 15 county departments that did not receive an allocation of the 1985 State appropriation for child protective services;

(2) In addition, each of the 100 county departments shall receive an allocation of $10,000 for the 1989-90 fiscal year and $10,000 for the 1990-91 fiscal year;

(3) The balance of available funds shall be allocated to each county department based upon the percentage that the total number of abuse and neglect reports within that county represents to the statewide total number of abuse and neglect reports. These percentages shall be computed from the reports received by the Central Registry of Abuse and Neglect cases for the next two prior fiscal years.

(b) Funds allocated to county departments of social services pursuant to this section shall be used for staff carrying out investigations of reports of child abuse or neglect or providing protective or preventive services in cases in which the department confirms neglect, abuse, or dependency. If a county department demonstrates that it has adequate protective services staff, these funds may be used to purchase or provide treatment and other support services to children and their families in confirmed cases. All expenditures shall be directly in support of the departments' program of protective services for children. These funds shall not be used to supplant any Social Services Block Grant funds or county appropriations previously budgeted for protective services for children.

(c) The Department of Human Resources, Division of Social Services, shall establish criteria and guidelines to assure that the allocations to county departments of social services are used in accordance with the intent and purposes of this section. The Division shall evaluate the results and any progress achieved in improving statewide protective services for children through the expenditure of the appropriation, and shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office by May 1, 1990.

Requested by: Senator Walker, Representatives Duncan, L. Etheridge

-----DOMICILIARY CARE RATE INCREASE

Sec. 131. Section 81 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, reads as rewritten:

"Sec. 81. Effective January 1, 1990, the maximum monthly rate for ambulatory residents in domiciliary care facilities shall be ~~six hundred ninety-six dollars ($696.00)~~ seven hundred twenty-four dollars ($724.00) and the maximum monthly rate for semi-ambulatory residents shall be ~~seven hundred thirty dollars ($730.00)~~ seven hundred sixty dollars ($760.00). Effective January 1, 1991, the maximum monthly rates for ambulatory residents shall be increased to ~~seven hundred six dollars ($706.00)~~ seven hundred thirty-four dollars ($734.00) and for semi-ambulatory residents ~~seven hundred forty dollars ($740.00)~~ seven hundred seventy dollars ($770.00)."

Requested by: Senator Walker, Representatives Duncan, L. Etheridge

-----FOSTER CARE RATE INCREASE

Sec. 132. (a) Section 75 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, reads as rewritten:

"-----FOSTER CARE BOARD RATE

Sec. 75. ~~Funds~~ Effective July 1, 1989 through December 31, 1989, funds appropriated to the Department of Human Resources by Section 3 of this act for foster care board rates shall be used to set the rates at two hundred dollars ($200.00) per child per month."

(b) Effective January 1, 1990, funds appropriated to the Department of Human Resources by Section 3 of this act for foster care board rates shall be used to set the rates at two hundred fifty dollars ($250.00) per child per month.

Requested by: Senator Walker, Representatives Duncan, L. Etheridge

-----REVISED/EXPANDED MEDICAID COVERAGE FOR PREGNANT WOMEN AND FOR CHILDREN

Sec. 133. Subsection (m) of Section 70 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, reads as rewritten:

"(m) ~~The Department of Human Resources shall provide Medicaid coverage for pregnant women; for children under age 3; for children under age 4 beginning October 1, 1989; and for children under age 5 beginning October 1, 1990, whose family income is equal to or less than the federal poverty guidelines as revised annually.~~

The Department of Human Resources shall provide Medicaid coverage to pregnant women, to infants, and to children according to the following schedule:

(1) Effective July 1, 1989, through December 31, 1989, pregnant women with family incomes equal to or less than the federal poverty guidelines as revised annually shall be covered for Medicaid benefits;

(2) Effective January 1, 1990, pregnant women with incomes equal to or less than one hundred fifty percent (150%) of the federal poverty guidelines as revised annually shall be covered for Medicaid benefits;

(3) Effective July 1, 1989, through December 31, 1989, infants under the age of one with family incomes equal to or less than the federal poverty guidelines as revised annually shall be covered for Medicaid benefits;

(4) Effective January 1, 1990, infants under the age of one with family incomes equal to or less than one hundred fifty percent (150%) of the federal poverty guidelines as revised annually shall be covered for Medicaid benefits;

(5) Effective July 1, 1989, through September 30, 1989, children under the age of three with family incomes equal to or less than the federal poverty guidelines as revised annually shall be covered for Medicaid benefits; and

(6) Effective October 1, 1989, children under the age of six with family incomes equal to or less than the federal poverty guidelines as revised annually shall be covered for Medicaid benefits.

(7) Effective October 1, 1990, children under the age of seven with family incomes equal to or less than the federal poverty guidelines as revised annually shall be covered for Medicaid benefits.

Services to pregnant women eligible under this ~~provision~~ section continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant ~~women~~ women, to infants, and to children eligible under this section, no resources test shall be applied."

Requested by: Senator Plyler

-----ANSON COUNTY SEWER FUNDS

Sec. 134. The funds allocated to Anson County by Section 4 of Chapter 876 of the 1987 Session laws to extend the sewer line from the Anson County sewer line on U.S. Highway 74 westward to Anson

Community College that were not needed for that purpose may be used by Anson County to extend the sewer line to the west of Anson Community College.

Requested by: Representatives Stam, Nesbitt
-----AFDC INCREASE

Sec. 135. Subsection (d) of Section 70 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, reads as rewritten:

"(d) Medicaid and Aid to Families with Dependent Children Income Eligibility Standards. Effective until ~~January 1, 1988,~~ December 31, 1989, the maximum net family annual income eligibility standards for Medicaid and Aid to Families with Dependent Children and the Standard of Need for Aid to Families with Dependent Children shall continue as set by Section ~~118~~ 67 of Chapter ~~1014~~ 738 of the ~~1985~~ 1987 Session ~~Laws, Regular Session 1986.~~ Laws. Effective January 1, ~~1988,~~ 1990, the maximum net family annual income eligibility standards for Medicaid and Aid to Families with Dependent Children, and the Standard of Need for Aid to Families with Dependent Children shall be as follows:

	Categorically Needy		Medically Needy
Family Size	Standard Of Need	AFDC Payment Level*	AA,AB,AD*
1	~~$4,248~~ $4,344	~~$2,124~~ $2,172	~~$2,900~~ $2900
2	~~5,544~~ 5,664	~~2,772~~ 2,832	~~3,700~~ 3,800
3	~~6,384~~ 6,528	~~3,192~~ 3,264	~~4,300~~ 4,400
4	~~6,984~~ 7,128	~~3,492~~ 3,564	~~4,700~~ 4,800
5	~~7,608~~ 7,776	~~3,804~~ 3,888	~~5,100~~ 5,200
6	~~8,208~~ 8,376	~~4,104~~ 4,188	~~5,500~~ 5,600
7	~~8,760~~ 8,952	~~4,380~~ 4,476	~~5,900~~ 6,000
8	~~9,168~~ 9,256	~~4,584~~ 4,680	~~6,200~~ 6,300

* Aid to Families with Dependent Children (AFDC); Aid to the Aged (AA); Aid to the Blind (AB); Aid to the Disabled (AD).

The payment level for Aid to Families with Dependent Children shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission."

Requested by: Representatives Duncan, Jeralds
-----ADOLESCENT PREGNANCY PREVENTION PROJECTS

Sec. 136. Section 91 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, reads as rewritten:

"Requested by: Senator Walker

-----ADOLESCENT PREGNANCY PREVENTION PROJECTS

Sec. 91. (a) Of the funds appropriated to the Division of Health Services, Department of Human Resources, by Section 5 of this act, nine hundred forty thousand dollars ($940,000) for the 1989-90 fiscal year and nine hundred forty thousand dollars ($940,000) for the 1990-91 fiscal year shall be used to fund adolescent pregnancy prevention projects. Projects that were funded in the 1988-89 fiscal year from General Fund appropriations or federal block grants shall receive continuation funding during the 1989-90 fiscal year, subject to the provisions listed in this section.

(b) The Division of Health Services shall by November 1, 1989, complete an evaluation of the projects in Brunswick, Durham, Henderson, Robeson, Cumberland, and Harnett Counties, which evaluation shall compare these projects' current operations to their operations at the time of their evaluation by the Human Services Institute. This comparison shall include:

(1) The degree to which the project has identified specific goals and objectives for its activities;

(2) The degree to which the project has identified, and is targeted at, a population at high risk of becoming pregnant or already pregnant;

(3) The degree to which the project has actively involved its community in its activities;

(4) The degree to which the project has sought out and utilized available technical resources and assistance; and

(5) The degree to which the project accounts for and evaluates its activities.

~~The Division shall complete the evaluation of the projects within 90 days of the effective date of this act. Thereafter,~~The Commission for Health Services shall review the Division's evaluation and shall determine if funding for any project should be discontinued. Upon such a determination, the Division shall inform the project that funding shall cease as of December 31, 1989. In the event that any project is discontinued, the Division may use funds made available from the discontinuation to employ additional staff to provide planning and evaluation assistance to local projects. Contingent upon the further availability of resources, the Division may solicit applications from existing or additional projects and recommend to the Commission for Health Services projects for funding with monies made available from the discontinuation of projects. The Commission for Health Services shall make the final determination of any new projects to be funded.

Beginning in fiscal year 1990-91, the Division shall evaluate all of the adolescent pregnancy projects funded as a result of this program at

least yearly and shall report its findings to the Adolescent Pregnancy Study Commission, the Commission for Health Services, and the General Assembly by April 1 of each year. Any evaluation of these projects ~~after January 1, 1990,~~ shall include a study of the effectiveness of the project in reducing the pregnancy rate within the target population.

~~The Division shall report the results of its evaluation of the projects listed in this subsection to the Commission for Health Services. The Commission shall make the determination if a project is to be continued or discontinued. In the event that any of these projects is discontinued, and sufficient funds are available, the Division may hire an additional staff person to assist in the operation of the program and fund the position from monies made available from the discontinuation of projects. Contingent upon the further availability of resources, the Division shall solicit applications from additional projects and recommend to the Commission for Health Services projects for funding with monies made available from the discontinuation of projects. The Commission for Health Services shall make the final determination of any new projects to be funded.~~

(c) The Commission for Health Services shall be responsible for monitoring the Division's administration of the Adolescent Pregnancy Prevention Program. The Division shall implement the following changes in the management and funding of the Adolescent Pregnancy Prevention Program for projects funded from General Fund appropriations and federal block grants:

(1) Applications. Any local agency or organization or combination of agencies and organizations may apply to the Division of Health Services for an allocation of money to operate a project aimed at preventing adolescent pregnancy. The application shall contain an analysis of the adolescent pregnancy and related problems in the locality the project would serve, and a description of how the project would attempt, over a period of at least five years, to prevent the problems. The application shall state how much money is needed to operate the project and how the money shall be spent. The Division shall conduct annually a proposal-writing session that shall be attended by a representative of any project that wishes to apply for funding; that session shall define the criteria for accountability and evaluation that the Division requires of projects. That session shall also provide information about additional funding sources to which projects might turn to satisfy the matching requirements of subdivision (5) of this section.

(2) ~~Minimum Standards: First Year.~~ Proposal Requirements. The Division shall apply the following minimum standards to projects applying for first-year funding:

a. Each project shall have a plan of action that extends for at least five years for prevention of adolescent pregnancy.

b. Each project shall have realistic, specific, and measurable goals and objectives for the prevention of adolescent pregnancy.

c. Each project, before submitting its proposal, shall send a representative to the proposal-writing session held by the Division.

(3) ~~Minimum Standards: Succeeding Years.~~ Operating standards. The Division shall apply the following minimum operating standards ~~to projects applying for second and succeeding years' funding~~:

a. Each project shall have a Board of Advisors composed of members from outside the sponsoring agency of the project. The Board of Advisors shall include representatives from at least four of the following: media, government, charitable organizations, private business, medical institutions. The Boards of Advisors shall meet ~~monthly~~ at least quarterly and ~~are responsible for project evaluations and reports~~ advise project staff on project policies and operations.

b. Each project shall ~~promptly~~ comply with ~~reporting and~~ reporting, contracting, and evaluation requirements of the Division.

c. Each project shall define and maintain cooperative ties with other community institutions.

d. Each project shall demonstrate its ability to attract financial support from sources other than the State, including sources in the local community.

(4) Criteria for Selection. For first-year funding, the Division shall choose from among the applicants that meet the minimum standards in subdivision (2) of this subsection the best selection of projects according to the following criteria:

a. ~~Qualifications of staff~~ Adequacy of proposed staff to meet project objectives,

b. Appropriateness of ~~the project to adolescent pregnancy prevention~~ project strategies to reduce adolescent pregnancy,

c. ~~Appropriateness of the project to the locality~~ Level of community support,

d. Degree of need of the locality, and

e. Other appropriate criteria.

The Division shall make its recommendations for funding to the Commission for Health Services. The Commission shall make the final determination of which projects are to be funded ~~and shall be advised in this decision by a panel that shall include experts in fields related to adolescent pregnancy~~. The Commission shall consider the recommendations of the Division but shall not be bound by them. The Commission shall notify the projects that are to be funded by June 1 of each year.

(5) Schedule of Funding. If the Commission, upon consultation with the Division, finds that a project it has chosen for first-year funding continues to meet the ~~minimum~~ operating standards of subdivisions (2) and (3) of this subsection, ~~the Division shall continue to fund that project's demonstrated needs, to the extent of available money, for five years~~ funding for that project shall continue, to the extent of available money, for an additional four years. The level of funding provided by the Division to approved projects shall be set according to the following schedule:

a. ~~Eighty~~ First year, eighty percent (80%) of the project's annual budget ~~in the first year~~ not to exceed the maximum award established by the Commission for Health Services.

b. ~~Seventy~~ Second year, ninety percent ~~(70%)~~ (90%) ~~in the second year~~ of the State appropriations or federal block grant funds awarded in the first year.

c. ~~Sixty~~ Third year, seventy-five percent ~~(60%)~~ (75%) ~~in the third year~~ of the State appropriations or federal block grant funds awarded in the first year.

d. ~~Fifty~~ Fourth year, sixty-five percent ~~(50%)~~ (65%) ~~in the fourth year~~ of the State appropriations or federal block grant funds awarded in the first year, and

e. ~~Forty~~ Fifth year, fifty percent ~~(40%)~~ (50%) ~~in the fifth year~~ of the State appropriations or federal block grant funds awarded in the first year.

The portion of a project's budget that must come from sources other than State or federal block grant funds may be provided as in-kind contributions as well as cash.

(6) Five-Year Limit on Funding. No project shall receive State funding if it has previously received State funding for five full years. Provided that any project that has received State funding before July 1, 1990, will be eligible for consideration for an additional five years' State support.

according to the schedule. The Commission may fund any such project that meets the minimum standards if it determines, after considering the experience and impact of the project and measuring its application against those of other applicants, that it should be funded.

(7) Maximum Level of Funding. The Commission for Health Services shall by rule determine the maximum annual amount that may be made to any one project."

Requested by: Representatives Duncan, L. Etheridge
-----INFANT MORTALITY PREVENTION FUNDS

Sec. 137. Of the funds appropriated to the Department of Human Resources, Division of Medical Assistance in Section 3 of this act for the 1989-90 fiscal year, the sum of $260,000 shall be used for an Infant Mortality Prevention Campaign. The Campaign shall be an educational awareness program, directed at all women of childbearing age, on the importance of early, continuous, and good prenatal care. The program shall be accomplished through television, radio, and other news media.

Requested by: Representative Duncan
-----STATEWIDE MEDICAL EXAMINER FUNDS

Sec. 138. The State Health Director may budget for the 1989-90 fiscal year up to $450,000 of excess federal indirect cost receipts to complete, staff, and equip the Statewide Medical Examiner System.

Requested by: Representatives Duncan, L. Etheridge
-----PRESCRIPTION DRUG REIMBURSEMENT

Sec. 139. (a) Section 70(a)(6) of Chapter 500 of the 1989 Session Laws reads as rewritten:

"(6) *Drugs* - Drug costs as allowed by federal regulations plus ~~four dollars four cents ($4.04)~~ four dollars twenty-four cents ($4.24) professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills. Payments for drugs are subject to the provisions of subsection (g) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with a plan adopted by the Department of Human Resources consistent with federal reimbursement regulations."

(b) Effective upon the reduction of the estimated drug acquisition cost below the Average Wholesale Price, Section 70(a)(6) of Chapter

500 of the 1989 Session Laws, as rewritten by subsection (a) of this section, reads as rewritten:

"(6) *Drugs* - Drug costs as allowed by federal regulations plus ~~four dollars twenty-four cents ($4.24)~~ four dollars eighty-five cents ($4.85) professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills. Payments for drugs are subject to the provisions of subsection (g) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with a plan adopted by the Department of Human Resources consistent with federal reimbursement regulations."

Requested by: Representatives Duncan, L. Etheridge

-----CUED SPEECH FUNDS

Sec. 140. Of the funds appropriated to the Department of Human Resources, in Section 5 for the 1989-90 fiscal year and the 1990-91 fiscal year the sum of $50,000 shall be allocated each fiscal year to the Cued Speech Center, Incorporated, in Wake County to establish and operate a preschool deaf education program that will include a model center in two triangle areas of the State, to provide services by interpreters who will work throughout the State in local mainstream situations, to provide workshops for families, interpreters and professionals who work with hearing impaired infants and preschool children, and to provide direct services to hearing impaired senior citizens.

Requested by: Representative Wiser

-----BLIND SERVICES/INFORMATION

Sec. 141. G.S. 111-28 reads as rewritten:

"§ *111-28. Department of Human Resources authorized to receive federal, etc., grants for benefit of needy blind: use of information concerning blind persons.*

The Department of Human Resources is hereby authorized and empowered to receive grants-in-aid from the federal government or any State or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the State treasury and credited to the account of the Department of Human Resources, to be used in carrying out the provisions of this law.

The Commission for the Blind is hereby further authorized and empowered to make such rules and regulations as may be required by

the federal government or State or federal agency as a condition for receiving such federal funds, not inconsistent with the laws of this State.

Whenever the words 'Social Security Board' appear in G.S. 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The Department of Human Resources is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in other states relative to the provision of assistance and services to residents, nonresidents, or transients, and cooperate with other agencies of the State and federal governments in the provisions of such assistance and services and in the study of the problems involved.

The Department of Human Resources is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the Department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the Department of Human Resources, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the needy blind, directly or indirectly derived from the records, papers, files, or communications of the Department of Human Resources or the board of county commissioners or the county social services department, or acquired in the course of the performance of official duties.

Notwithstanding the above, the Department of Human Resources is authorized to release to the North Carolina Department of Motor Vehicles and the North Carolina Department of Revenue the name and medical records of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information and documents released to the Department of Motor Vehicles and the Department of Revenue shall be treated by those departments as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of Chapters 20 and 105 of the General Statutes of this State. The Department of Human Resources may also release to the North Carolina Library for the Blind and Physically Handicapped of the Department of Cultural Resources, the name and address of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information released to the North Carolina Library for the

Blind and Physically Handicapped shall be treated as confidential for its use only and shall not be released to any person for commercial or political purposes or for any purpose not directly connected with providing information concerning services offered by the North Carolina Library for the Blind and Physically Handicapped."

Requested by: Representatives Duncan, L. Etheridge
-----ENVIRONMENTAL HEALTH FUNDS

Sec. 142. Of the funds appropriated to the Department of Human Resources, Division of Health Services in Section 5 of this act for the 1989-90 fiscal year and for the 1990-91 fiscal year the sum of $300,000 shall be used each fiscal year for the purpose of providing high quality environmental health programs.

These funds shall be allocated equally among the 100 counties.

Requested by: Representatives Duncan, L. Etheridge
-----SOLID WASTE MANAGEMENT TECHNICAL ASSISTANCE

Sec. 143. Of the new positions authorized in Section 3 of this act for the Department of Human Resources, Division of Health Services, four positions shall be used primarily for the purpose of providing direct solid waste technical assistance to units of local government. The term "technical assistance" as used in this section includes examination of alternative methods for solid waste management, development of waste stream reduction strategy, recycling strategies, and studies of financing alternatives for solid waste management systems.

The positions designated for technical assistance to units of local government shall be located in the Solid Waste Management Section and shall be designated as a separate branch of this section. The Secretary of the Department of Human Resources may assign these positions to the Department's Regional Offices.

The Department shall submit an annual report on the technical assistance activities undertaken with these positions, including the number and geographical distribution of units of local government served, the category of assistance, and specific results attributed to the technical assistance, to the Joint Legislative Committee on Governmental Operations. This report shall be submitted no later than April 15 of each year.

Requested by: Representatives Duncan, L. Etheridge
-----SUPERFUND PROGRAM

Sec. 144. The Department of Human Resources may use funds available, with the approval of the Office of State Budget, in order to provide the ten percent (10%) cost share required for Superfund

cleanups on National Priority List sites. These funds may be in addition to those appropriated for this purpose.

The Department of Human Resources and the Office of State Budget will report the amount and the source of the funds to the Joint Legislative Commission on Governmental Operations.

Requested by: Representative Duncan
-----AGING FUNDS

Sec. 145. Of the funds appropriated to the Department of Human Resources, Division of Aging for the 1989-90 fiscal year, the sum of $120,000 shall be used as follows:

(1) $10,000 each shall be allocated to Buncombe, Craven, Cumberland, Guilford, Mecklenburg, Robeson, and Surry Counties to fund the existing Information and Referral Pilot Projects first implemented pursuant to Section 8 of Chapter 1095 of the 1987 Session Laws; and

(2) $50,000 shall be used to contract with the Center for Aging Research and Educational Services at the University of North Carolina at Chapel Hill, the Long-Term Care Resources Program at Duke University, or both, for technical assistance in designing methods for alleviating the service fragmentation associated with in-home and community-based supportive services for older adults and their families.

Requested by: Representative Cromer
-----ASBESTOS HAZARD MANAGEMENT FUNDS

Sec. 146. The fees established and collected pursuant to Article 19 of Chapter 130A of the General Statutes are appropriated to the Department of Human Resources to support the Asbestos Hazard Management Program.

PART XVIII.-----DEPARTMENT OF AGRICULTURE

Requested by: Senators Basnight and Barker
-----AQUACULTURE DEVELOPMENT

Sec. 147. Chapter 106 of the General Statutes is amended by adding a new article to read:

"ARTICLE 63.

"Aquaculture Development Act.

"*§ 106-756. Legislative findings and purpose.*

The General Assembly finds and declares that it is in the best interest of the citizens of North Carolina to promote and encourage the development of the State's aquacultural resources in order to augment

food supplies, expand employment, promote economic activity, increase stocks of native aquatic species, enhance commercial and recreational fishing and protect and better use the land and water resources of the State.

"§ *106-757. Short title.*

This Article shall be known as the Aquaculture Development Act.

"§ *106-758. Definitions.*

As used in this Article,

(1) 'Aquaculture' means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching;

(2) 'Aquaculture facility' means any land, structure or other appurtenance that is used for aquaculture, including, but not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture;

(3) 'Aquatic species' means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, 'fish' and 'fishes' as defined in G.S. 113-129(f);

(4) 'Commissioner' means the Commissioner of Agriculture;

(5) 'Department' means the North Carolina Department of Agriculture.

"§ *106-759. Lead agency; powers and duties.*

(a) For the purposes of this Article, aquaculture is considered to be a form of agriculture and thus the Department of Agriculture is designated as the lead State agency in matters pertaining to aquaculture.

(b) The Department shall have the following powers and duties:

(1) To provide aquaculturalists with information and assistance in obtaining permits related to aquacultural activities;

(2) To promote investment in aquaculture facilities in order to expand production and processing capacity; and

(3) To work with appropriate State and federal agencies to review, develop and implement policies and procedures to facilitate aquacultural development.

"§ *106-760. Advisory Board.*

(a) There is created within the Department of Agriculture the Aquaculture Advisory Board, to consist of the following persons:

(1) The Commissioner of Agriculture, or his designee;

(2) The Secretary of Commerce, or his designee;

(3) The Secretary of Natural Resources and Community Development, or his designee;

(4) The President of the North Carolina Biotechnology Center, or his designee;

(5) The President of The University of North Carolina, or his designee;

(6) One Senator designated by the President Pro Tempore of the Senate; and

(7) One Representative designated by the Speaker of the House of Representatives.

(b) The Commissioner of Agriculture or his designee shall serve as Chairman of the Board. A majority of the Board shall constitute a quorum for the transaction of business. Clerical and other assistance shall be provided by the Department of Agriculture. The Commissioner may appoint advisory committees, pursuant to G.S. 143B-10(d), to assist the Board in carrying out its duties.

(c) The Board shall review State and federal policies, laws and regulations affecting aquaculture and recommend changes which may be necessary or useful to carry out the purposes of this Article. The Board shall present its recommendations to the Governor and the General Assembly. The Board shall also assist in the coordination of aquaculture-related activities of the various State agencies and institutions, and shall coordinate research and technology transfer activities to respond to the emerging requirements of aquaculture."

Requested by: Representative Rogers

-----GENETIC ENGINEERING

Sec. 148. (a) Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 64.

"Genetically Engineered Organisms Act.

"§ *106-765. Declaration of findings.*

The General Assembly of North Carolina finds and declares that biotechnology has enormous potential to benefit many fields of human endeavor, including agriculture, health care, and environmental protection, and that North Carolina, as a center for the agricultural, pharmaceutical, health care, fermentation, chemical, and food processing industries has much to gain from advances in biotechnology and genetic engineering.

The General Assembly further finds that as products of biotechnology move from contained laboratories into the environment for testing and commercialization, the citizens of North Carolina may have concerns about the potential effects of planned introductions of new genetically engineered organisms on agriculture, public health, and the natural environment. While the majority of these introductions will be environmentally benign and comparable to the introduction of new genetic entities derived from selective breeding,

certain introductions might pose unknown risks and, as such, require appropriate oversight.

The General Assembly therefore determines that it is incumbent upon the State, working in concert with the federal regulatory authorities, to take responsible, timely and minimally burdensome measures to ensure that the public and the environment are protected and that risks from the environmental use of new genetically engineered organisms are promptly addressed, while simultaneously allowing biotechnological research and product development to advance. To do so, the State will create, in the Department of Agriculture, a Genetic Engineering Review Board responsible for reviewing and approving proposed introductions of genetically engineered organisms into the environment. This Board will enable the State, in cooperation with the federal authorities, to assess the potential risks and effects of releases of genetically engineered organisms without undue governmental interference with the progress and commercial development of biotechnology.

"§ *106-766. Title.*

This Article shall be known as the 'Genetically Engineered Organisms Act.'

"§ *106-767. Purpose.*

The purpose of this Article is to regulate the release and commercial use of genetically engineered organisms in order to protect agriculture, public health, and the environment. This Article does not apply to the breeding of plants, animals, and other organisms by traditional methods, such as artificial insemination or hand pollination.

"§ *106-768. Definitions.*

As used in this Article:

(1) 'Adverse effect' means physical injury to agriculture, public health, or the environment.

(2) 'Board' means the Genetic Engineering Review Board.

(3) 'Commercial use' means the sale, offering for sale, or distribution of a genetically engineered organism.

(4) 'Commissioner' means the Commissioner of Agriculture.

(5) 'Department' means the Department of Agriculture.

(6) 'Genetic engineering' means the introduction of new genetic material to an organism or the regrouping of an organism's genes, except for the breeding of plants, animals, and other organisms by traditional methods, such as artificial insemination or hand pollination, and such other methods as may be designated by the Board under G.S. 106-770.

(7) 'Genetically engineered organism' means a living organism derived from genetic engineering.

(8) 'Organism' means any animal, plant, bacterium, cyanobacterium, fungus, protist, or virus.

(9) 'Release' means the placement or use of a genetically engineered organism outside a contained laboratory, fermentation facility, greenhouse, building, structure, or other similar facility or under any other conditions not specifically determined by the Board to be adequately contained.

"§ 106-769. *Genetic Engineering Review Board.*

(a) There is created the Genetic Engineering Review Board in the Department of Agriculture. The Board shall consist of 10 members as follows:

(1) The Secretary of the Department of Natural Resources and Community Development or his designee;

(2) The Secretary of Human Resources or his designee;

(3) The Commissioner of Agriculture or his designee;

(4) The President of the North Carolina Biotechnology Center or his designee;

(5) The Dean of the College of Agriculture and Life Sciences at North Carolina State University, or his designee, and the Dean of the School of Agriculture at North Carolina Agricultural and Technical State University, or his designee;

(6) The Dean of the School of Public Health of the University of North Carolina at Chapel Hill or his designee;

(7) A practicing farmer who is an active member of a farm organization, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives;

(8) A representative of a nonprofit public interest organization appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate; and

(9) A representative of the biotechnology industry appointed by the Governor.

(b) The appointed members of the Board shall serve for three-year terms. Members designated by an ex officio member shall serve at the pleasure of the ex officio member. Appointments and designations shall be made within 60 days after the effective date of this Article.

(c) A chairman shall be elected by the Board from among its members for a one-year term, and shall serve no more than two consecutive terms. The Commissioner of Agriculture may appoint a member of the Board to serve as interim chairman for one year or until the Board elects a chairman, whichever is sooner.

(d) Any vacancies shall be filled by the appropriate appointing authority. Any appointment to fill a vacancy on the Board created by resignation, dismissal, death, disability or any cause shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Any appointed member of the Board may be removed by the appointing authority for misfeasance, malfeasance or nonfeasance.

(e) The members of the Board who are not State employees shall receive per diem and travel and subsistence allowances as provided by law. All clerical and other services required by the Board shall be supplied by the Department of Agriculture. A majority of the Board shall constitute a quorum for the transaction of business. Rule making and administrative proceedings shall be governed by the North Carolina Administrative Procedure Act.

"§ *106-770. Board's powers and duties.*

(a) The Board shall:

(1) Delegate to the Commissioner any of its duties, other than rule making, but including issuance of permits, as the Board deems necessary or convenient for the administration and enforcement of this Article; and

(2) Adopt regulations designating those activities that will not be treated as genetic engineering for the purposes of this Article.

(b) The Board may:

(1) Grant, deny, suspend, modify or revoke permits as provided by this Article;

(2) Adopt, amend, or revoke regulations to implement and carry out the purposes of this Article; and

(3) Establish advisory committees to assist the Board in carrying out its duties.

"§ *106-771. Commissioner's powers and duties.*

The Commissioner may:

(1) Enforce this Article, administer the permit process, and exercise the powers and duties imposed upon him by this Article or by rules adopted in accordance with this Article; and

(2) Designate such employees of the North Carolina Department of Agriculture, and enter into cooperative agreements with federal and State agencies, as may be necessary to carry out the duties and exercise the powers provided by this Article.

"§ *106-772. Permits required; applications; federal review; permit revocation.*

(a) A genetically engineered organism may not be released into the environment, or sold, offered for sale, or distributed for release into

the environment unless a permit for its release has been issued pursuant to this Article. The Board may, by regulation, provide for general permits for classes of activities for which individual permits will not be required.

(b) Permit applications shall be on forms or in the format prescribed by the Board, and shall include such information as the Board deems necessary in order to determine compliance with this Article. To the extent feasible, the Board shall authorize the use of forms or formats required by the federal government for actions similar to those regulated under this Article. Applicants shall, upon request by the Board, submit copies of data submitted with corresponding federal permit applications.

(c) The Board may require such additional data as it deems necessary to determine potential adverse effects of the release of the organism on agriculture, public health, and the environment. To the extent possible, the Board shall accept for review and base its decision on the data submitted with the federal application.

(d) The Board may, if it deems it necessary to protect agriculture, public health, or the environment from potential adverse effects of the release of a genetically engineered organism:

(1) Place restrictions on the number and location of organisms released, method of release, training of persons involved with the release of organisms, disposal of organisms, and other conditions of use;

(2) Require measures to limit dispersal of released organisms or spread of inserted genes or gene products;

(3) Require monitoring of the abundance and dispersal of the released organism or inserted genes or gene products; and

(4) Deny, suspend, modify, or revoke the permit.

(e) The Board may submit written comments to any federal agency reviewing a proposed or completed release, and otherwise participate in any such reviews. The Board may issue a permit under this Article based on the federal review and approval of the proposed release if the Board determines that federal regulation of the release sufficiently protects agriculture, public health, and the environment in North Carolina. The Board shall minimize duplication of federal regulatory requirements to the extent possible.

(f) The Board may deny, suspend, modify, or revoke a permit for failure to comply with this Article or with any rule adopted in accordance with this Article. Such proceedings shall be in accordance with the Administrative Procedure Act. The Board may summarily suspend a permit in accordance with G.S. 150B-3, pending further proceedings, if the Board determines that an adverse effect is

occurring or is likely to occur because of a release authorized by such permit.

(g) A decision shall be made on a permit application within 90 days from the date the completed application is received by the Board, unless a public hearing is held pursuant to G.S. 106-773. The Board may, for good cause, extend the time for making a decision by no more than 30 days.

(h) Issuance of permits under this Article is not subject to the provisions of Article 1 of Chapter 113A of the General Statutes.

(i) An application may be withdrawn at any time by written notice to the Board.

"*§ 106-773. Public notice of releases; public hearing.*

(a) Within 15 days after receiving a completed application for a proposed release, the Board shall publish notice and a brief description of the proposed release, unless the Board intends to deny the application. Notice shall also be provided to any person who has filed a written request to be notified of such releases. The Board shall prescribe the form, content and extent of the notice. However, at a minimum, notice shall be given by publication one time in a newspaper having general circulation in each county where the release is proposed to be made. In addition, subject to the provisions of this Article regarding confidential business information, any documents submitted as part of the application shall be available for public inspection or copying at or near the site of the proposed release and at the offices of the Board. Any person may submit written comments to the Board regarding the proposed release.

(b) Any person may request a public hearing on a permit application by filing a written request with the Board within 30 days after the date of the notice of the application. The Board shall consider all such requests for hearing and, if it determines that there is significant public interest and justification for holding such a hearing, a hearing shall be held in the county where the release is proposed to be made. If the Board determines that a public hearing should be held, it may do so even though no hearing has been requested. Notice of the hearing shall be published at least 30 days before the hearing date. The Board shall prescribe the form, content, and extent of the notice. However, at a minimum, notice shall be given by publication one time in a newspaper having general circulation in each county where the release is proposed to be made.

(c) If a public hearing is held, a decision shall be made on the permit application within 120 days after the date the completed application is received by the Board. The Board may, for good cause, extend the time for making a decision by no more than 30 additional days.

(d) The Board may, with the written consent of the applicant, extend the period to review the application.

"*§ 106-774. Confidential business information.*

(a) In submitting information pursuant to this Article, an applicant for a permit may designate as 'confidential' any portions of which the applicant believes are entitled to treatment as confidential business information. A designation of confidentiality shall be made in writing and in such manner as the Board may prescribe. Information designated as 'confidential' may be submitted separately from other material submitted.

(b) Any person engaged in the review of the effects of a proposed release of a genetically engineered organism who believes that access to undisclosed confidential business information is necessary in order to perform such review effectively may request the disclosure of material designated as confidential business information by submitting a written petition to the Board. Such a petition shall state the reason(s) that such confidential business information is necessary to the performance of the petitioner's review. In addition, the petitioner shall sign an affidavit affirming that the petitioner is not nor does petitioner represent in any capacity a person engaged in any business or enterprise in competition with the applicant or in which the confidential business information could be utilized for commercial or product development purposes. The applicant shall be notified of the petition and shall have an opportunity to respond to the petition. Such response may include an offer by the applicant to produce the confidential business information to the petitioner pursuant to terms to be expressed in a written agreement between the applicant and the petitioner, an explanation by the applicant as to why the petitioner does not need the confidential business information in order to perform such review or an offer by the applicant to provide the petitioner with other information which is not confidential and responds to the petitioner's reasons for requesting the confidential business information. By mutual written agreement of the petitioner and the applicant, the Board may delay a decision on the petition until further written notice by the petitioner. The Board shall then make a determination as to whether the petitioner does require access to any or all of the confidential business information requested by the petitioner in order to make an effective, independent review of the proposed release. Where the Board determines that the petitioner does require access to some or all of the confidential business information requested by the petitioner, the Board shall notify the applicant and the petitioner of its decision, and the applicant shall provide that confidential business information which is required by the petitioner as determined by the Board to the petitioner or withdraw its

application. If the Board's decision is appealed, the applicant shall not be required to disclose the confidential business information pending appeal. If the application is withdrawn, all confidential business information shall be returned to the applicant and shall not be disclosed.

(c) Except as provided in this Article, no person may reveal or use for his own benefit any confidential business information received pursuant to this Article.

(d) Nothing in this section, or in rules adopted under this section, authorizes the Board or any person to withhold from the public information regarding the adverse effects of a proposed release of any organism.

"§ *106-775. Local regulation.*

No county or municipality shall enact any regulation or ordinance regulating the release of genetically engineered organisms.

"§ *106-776. Unlawful acts; penalties; injunctions.*

(a) No genetically engineered organism may be released, sold, offered for sale, or distributed in violation of this Article or rules adopted in accordance with this Article.

(b) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Board against any person who violates any provision of this Article or any rule of the Board. In determining the amount of the penalty, the Board may consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Procedure Act. Each day's violation shall constitute a separate offense.

(c) A person who interferes with or attempts to interfere with the Commissioner or any of his agents while engaged in the performance of their duties under this Article, or violates any provision of this Article or any rule of the Board, is guilty of a misdemeanor and is punishable by a fine of not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000) for each offense. Each day's violation shall constitute a separate offense.

(d) Notwithstanding any remedy at law, the Commissioner is authorized to apply to the superior court, and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction to prevent or stop a violation of this Article.

(e) Any public employee who willfully releases a genetically engineered organism in violation of this Article shall be subject to dismissal.

"§ *106-777. Expiration.*

This Article shall expire September 30, 1995."

(b) No permits are required under G.S. 106-772, as enacted in subsection (a) of this section, until July 1, 1990.

(c) G.S. 120-123 is amended by adding a new subdivision to read:

"(8a) The Genetic Engineering Review Board, as created by G.S. 106-769."

PART XIX.-----DEPARTMENT OF COMMERCE

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----WORKER READJUSTMENT PROGRAM FUNDS

Sec. 149. (a) There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of $1,200,000 for the 1989-90 fiscal year and the sum of $1,200,000 for the 1990-91 fiscal year for a Worker Readjustment Program to provide a statewide program of rapid response to plant closings.

(b) The Employment Security Commission shall report to the Joint Legislative Commission on Governmental Operations by the first of each month prior to the expenditure of any funds appropriated by this section. The report required by this subsection may be included in any other report that the Employment Security Commission is required to make to the Joint Legislative Commission on Governmental Operations.

(c) The Employment Security Commission shall use supplemental federal funds or other additional funds received by the Employment Security Commission for similar purposes before expending funds appropriated by this section.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----PETROLEUM OVERCHARGE FUNDS ALLOCATION

Sec. 150. (a) The funds and interest thereon received from the case of United States v. Exxon are deposited in the Special Reserve for Oil Overcharge Funds. There is appropriated from the Special Reserve to the Department of Commerce the sum of $10,900,000 for the 1989-90 fiscal year and the sum of $10,900,000 for the 1990-91 fiscal year to be allocated as follows:

(1) The sum of $2,200,000 for the 1989-90 fiscal year and the sum of $2,200,000 for the 1990-91 fiscal year shall be used for projects under the State Energy Conservation and Energy Extension Service Programs:

(2) The sum of $3,200,000 for the 1989-90 fiscal year and the sum of $3,200,000 for the 1990-91 fiscal year shall be used for the Low Income Weatherization Program;

(3) The sum of $2,500,000 for the 1989-90 fiscal year and the sum of $2,500,000 for the 1990-91 fiscal year shall be used for energy conservation programs for hospitals and schools; and

(4) The sum of $3,000,000 for the 1989-90 fiscal year and the sum of $3,000,000 for the 1990-91 fiscal year shall be used for the Low Income Home Energy Assistance Program (LIHEAP).

Any remaining funds in the Special Reserve for Oil Overcharge Funds may be expended only as authorized by the General Assembly. All interest or income accruing from all deposits or investments of cash balances shall be credited to the Special Reserve for Oil Overcharge Funds.

(b) There is appropriated from funds received from the United States Department of Energy's Stripper Well Litigation (MDL378) and appropriated to the Special Reserve for Oil Overcharge Funds to the Department of Commerce the sum of $5,975,000 for the 1989-90 fiscal year to be allocated as follows:

(1) The sum of $2,500,000 shall be paid to the Business Energy Improvement Program Revolving Loan Fund;

(2) The sum of $1,675,000 shall be used to expand the Transportation Information Management System (TIMS);

(3) The sum of $350,000 shall be used for waste tire utilization;

(4) The sum of $1,350,000 shall be used for local government energy conservation; and

(5) The sum of $100,000 shall be used for the Energy Assurance Study Commission.

(c) The Department of Commerce shall submit comprehensive annual reports to the General Assembly by May 15, 1990 and January 31, 1991, which detail the use of all funds received in the cases of United States v. Exxon and Stripper Well that were used or expended by State agencies. Any State department or agency that has received oil overcharge funds shall provide all information requested by the Department of Commerce for the purpose of preparing this report.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----BUSINESS ENERGY IMPROVEMENT PROGRAM

Sec. 151. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 14. Business Energy Improvement Program.

"§ *143B-472.30. Short title.*

This Part shall be known as the Business Energy Improvement Program.

"§ *143B-472.31. Legislative findings and purpose.*

The General Assembly finds and declares that it is in the best interest of the citizens of North Carolina to promote and encourage energy efficiency within the State's industrial and commercial base in order to conserve energy, promote economic competitiveness, and expand employment in the State.

"§ *143B-472.32. Lead agency; powers and duties.*

(a) For the purposes of this Part, the Department of Commerce, Energy Division, is designated as the lead State agency in matters pertaining to industrial and commercial energy conservation.

(b) The Division shall have the following powers and duties with respect to this Part:

(1) To provide industrial and commercial concerns doing business in North Carolina with information and assistance in undertaking energy conserving capital improvement projects to enhance industrial and commercial capacity.

(2) To establish a revolving fund within the Division for the purpose of providing secured loans in amounts not greater than five hundred thousand dollars ($500,000) per business entity to install energy-efficient capital improvements within businesses located within or translocating to North Carolina. In providing these loans, priority shall be given to businesses already located in the State.

(3) To work with appropriate State and federal agencies to develop and implement rules and regulations to facilitate this program.

(c) The annual interest rate charged for the use of the funds from the revolving fund established pursuant to subdivision (b)(2) of this section shall be one-half of the 90-day rate for United States Treasury Bills, not to exceed five percent (5%) per annum, excluding other fees required for loan application review and origination. The term of any loan originated under this section may not be greater than seven years.

(d) In accordance with the terms of the Stripper Well Settlement, administrative expenses for activities under this section shall be limited to five percent (5%) of funds appropriated for this purpose."

Requested by: Representatives B. Ethridge, Redwine

-----COMMERCE REGIONAL OFFICE

Sec. 152. (a) Funds appropriated in Section 3 of this act to the Department of Commerce, Division of Business/Industry Development, shall be used to establish an additional regional office

for economic development in eastern North Carolina. Any remaining funds may be used by the Department of Commerce, subject to the approval of the Office of State Budget and Management, to expand economic development operations in the State.

(b) The Department of Commerce shall provide a detailed report on the proposed expenditure of these funds to the Joint Legislative Commission on Governmental Operations by November 1, 1989.

Requested by: Representatives James, Beall
-----VISITOR AND WELCOME CENTERS FUNDS

Sec. 153. (a) Before any other transfers are made pursuant to G.S. 20-81.3(c) or (g), the Secretary of Transportation shall allocate and reserve the sum of $50,000 for the 1989-90 fiscal year and the sum of $150,000 for the 1990-91 fiscal year for personnel to man Visitor and Welcome Centers as follows:

(1) The sum of $50,000 for the 1989-90 fiscal year and the sum of $50,000 for the 1990-91 fiscal year for the Visitor and Welcome Center on U.S. Highway 17 in Camden County, to be administered by the Albemarle Regional Planning and Development Office in the City of Hertford;

(2) The sum of $50,000 for the 1990-91 fiscal year for the Visitor and Welcome Center on U.S. Highway 441 in Macon County, to be administered by a State chartered nonprofit organization or local government agency under contract with the Department of Transportation; and

(3) The sum of $50,000 for the 1990-91 fiscal year for the Visitor and Welcome Center on U.S. Highway 17 South in Brunswick County, to be administered by the Region O Council of Governments.

(b) This section shall expire June 30, 1991.

PART XX.-----DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Requested by: Representatives B. Ethridge, Redwine
-----ZOO RECEIPTS

Sec. 154. Part 22 of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"*§ 143B-336.1. Special Zoo Fund.*

A special continuing and nonreverting fund, to be called the Special Zoo Fund, is created. The North Carolina Zoological Park shall retain unbudgeted receipts at the end of each fiscal year, beginning June 30, 1989, and deposit these receipts into this Fund. This Fund shall be used for maintenance, repairs, and renovations of exhibits in

existing habitat clusters and visitor services facilities, and for the replacement of tram equipment as required to maintain adequate service to the public. The Special Zoo Fund may also be used to match private funds which are raised for these purposes. Funds may be expended for these purposes by the Department of Environment, Health, and Natural Resources on the advice of the North Carolina Zoological Park Council and with the approval of the Office of State Budget and Management. The Department of Environment, Health, and Natural Resources shall provide an annual report to the Office of State Budget and Management and to the Fiscal Research Division of the Legislative Services Office on the use of fees collected pursuant to this section."

Requested by: Representatives DeVane, Locks, Mercer
-----LUMBER RIVER PARKS RANGERS

Sec. 155. From the funds appropriated in Section 3 of this act to the Department of Natural Resources and Community Development, Division of Parks and Recreation for the 1989-90 fiscal year and the 1990-91 fiscal year for State Park Staff, the Department shall establish and fund two Park Ranger positions, including support and equipment costs, to be allocated to the Lumber River State Park.

Requested by: Representatives DeVane, Locks, Mercer
-----NATURAL AND SCENIC RIVERS SYSTEM

Sec. 156. (a) G.S. 113A-34 reads as rewritten:

"*§ 113A-34. Types of scenic rivers.*

The following types of rivers are eligible for inclusion in the North Carolina natural and scenic rivers system:

Class I. Natural river areas. Those free-flowing rivers or segments of rivers and adjacent lands existing in a natural condition. Those rivers or segments of rivers that are free of man-made impoundments and generally inaccessible except by trail, with the lands within the boundaries essentially primitive and the waters essentially unpolluted. These represent vestiges of primitive America.

Class II. Scenic river areas. Those rivers or segments of rivers that are largely free of impoundments, with the lands within the boundaries largely primitive and largely undeveloped, but accessible in places by roads.

Class III. Recreational river areas. Those rivers or segments of rivers that offer outstanding recreation and scenic values and that are largely free of impoundments. They may have some development along their shorelines and have more extensive public access than natural or scenic river segments. Recreational river segments may also link two or more natural and/or scenic river segments to provide

a contiguous designated river area. No provision of this section shall interfere with flood control measures; provided that recreational river users can continue to travel the river."

(b) G.S. 113A-35.2 reads as rewritten:

"§ *113A-35.2. Additional components.*

That segment of the Linville River beginning at the State Highway 183 bridge over the Linville River and extending approximately 13 miles downstream to the boundary between the United States Forest Service lands and lands of Duke Power Company (latitude 35° 50' 20") shall be a ~~scenic~~ natural river area and shall be included in the North Carolina Natural and Scenic River System.

That segment of the Horsepasture River in Transylvania County extending downstream from Bohaynee Road (N.C. 281) to Lake Jocassee shall be a natural river and shall be included in the North Carolina Natural and Scenic Rivers System.

That segment of the Lumber River extending from county road 1412 in Scotland County downstream to the North Carolina-South Carolina state line, a distance of approximately 102 river miles, shall be included in the Natural and Scenic Rivers System and classified as follows: from county road 1412 in Scotland County downstream to the junction of the Lumber River and Back Swamp shall be classified as scenic; from the junction of the Lumber River and Back Swamp downstream to the junction of the Lumber River and Jacob Branch and the river within the Fair Bluff town limits shall be classified as recreational; and from the junction of the Lumber River and Jacob Branch downstream to the North Carolina-South Carolina state line, excepting the Fair Bluff town limits, shall be classified as natural."

(c) In accordance with Article 2C of Chapter 113 of the General Statutes, the General Assembly creates the Lumber River State Park as a component of the State Parks System, to be managed as a State river.

The Department of Natural Resources and Community Development, Division of Parks and Recreation, shall prepare a general management plan for the Lumber River State Park, to include a master plan which shall recognize and provide for State and local government protection of the various parts of the river so as to preserve its outstanding character in perpetuity.

The general management plan shall be prepared by December 31, 1990, and transmitted to the Governor, the Lieutenant Governor, the President Pro Tempore of the Senate, and the Speaker of the House.

(d) For the purpose of law enforcement only, the North Carolina Indian Cultural Center shall be considered as part of those lands

subject to the provisions of Article 1A of Chapter 113 of the General Statutes.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----AUTHORIZATION FOR USE OF WATER QUALITY FEES

Sec. 157. (a) There is appropriated from the water quality fees collected and deposited in the nonreverting account established in G.S. 143-215.3A, a sum not to exceed $1,143,540 for the 1989-90 fiscal year and a sum not to exceed $1,465,585 for the 1990-91 fiscal year to the Department of Natural Resources and Community Development to retain and provide all necessary support for a position, or to establish and provide all necessary support for a position, in the water quality program, when sufficient fees for a position and all necessary support for the 1989-90 fiscal year and for the 1990-91 fiscal year have been deposited. No more than nine new positions for the 1989-90 fiscal year and no more than nine new positions for the 1990-91 fiscal year may be funded and supported in this manner. First priority is to retain and support those positions that were previously established by the General Assembly. Water quality fees shall be the only source of funds for these positions and all necessary support, including fringe benefits. These positions shall be used to reduce the backlog of permit applications and to improve the rate of compliance of facilities with environmental standards for toxic substances.

(b) The Department of Natural Resources and Community Development shall provide a quarterly report to the Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division beginning October 1, 1989. Each report shall state the amount and type of fees collected for the quarter and since the beginning of the fiscal year, the number of permit applications processed for the quarter and since the beginning of the fiscal year, the number of permit applications not processed, and the progress made in reducing the backlog of permit applications.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----AUTHORIZATION FOR USE OF AIR QUALITY FEES

Sec. 158. (a) There is appropriated from the air quality fees collected and deposited in the nonreverting account established in G.S. 143-215.3A, a sum not to exceed $627,000 for the 1989-90 fiscal year and a sum not to exceed $918,000 for the 1990-91 fiscal year, to the Department of Natural Resources and Community Development to establish and provide all necessary support for a position in the

Department of Natural Resources and Community Development, when sufficient fees for a position and all necessary support for the 1989-90 fiscal year and for the 1990-91 fiscal year have been collected and deposited. No more than eight new positions in the 1989-90 fiscal year and no more than six new positions in the 1990-91 fiscal year may be established in this manner. First priority is to retain and support those positions that were previously established by the General Assembly. Air quality fees shall be the only source of funds for these positions and all necessary support, including fringe benefits. These positions shall be used to conduct air quality permitting and air quality compliance and monitoring activities.

(b) The Department of Natural Resources and Community Development shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division beginning October 1, 1989. Each report shall state the amount and type of fees collected for the quarter and since the beginning of the fiscal year, the number of permit applications processed for the quarter and since the beginning of the fiscal year, the number of permit applications not processed, and the progress made in reducing the backlog of permit applications.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----SALES TAX PROCEEDS FOR WILDLIFE FUND MODIFIED

Sec. 159. G.S. 105-164.44B reads as rewritten:

"*§ 105-164.44B. Transfer to Wildlife Resources Fund of taxes on hunting and fishing supplies and equipment.*

~~For the 1987-88 fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use net tax collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund, one fourth of one million nine hundred sixty thousand dollars ($1,960,000). During subsequent fiscal years,~~ Each fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund, one fourth of ~~one million nine hundred sixty thousand dollars ($1,960,000)~~ two million eight hundred thirty-four thousand six hundred seventy-five dollars ($2,834,675) plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year."

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----TEXASGULF SETTLEMENT FUNDS

Sec. 160. The sum of $1,001,907, received by the Department of Natural Resources and Community Development in accordance with a settlement agreement with Texasgulf Inc., dated June 2, 1989, and placed in General Fund receipt code 1310-0720 in the Environmental Management Division, shall not be available for expenditure by the Department of Natural Resources and Community Development, and shall not revert to the General Fund, but instead is reallocated to the Beaufort County Board of Commissioners. The money shall be paid by the Office of State Budget and Management to the Beaufort County Board of Commissioners within 15 days after request for the funds by the Board of Commissioners.

The Beaufort County Board of Commissioners shall distribute the money to the Beaufort County School Administrative Unit and the Washington City School Administrative Unit on an average daily membership basis.

This section shall become effective June 30, 1989.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----AGRICULTURE COST SHARE PROGRAM

Sec. 161. (a) Of the funds appropriated to the Department of Natural Resources and Community Development in Section 5 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, for the Agriculture Cost Share Program for Nonpoint Source Pollution Control, a sum not to exceed $40,000 for the 1989-90 fiscal year and a sum not to exceed $40,000 for the 1990-91 fiscal year shall be used to fund tide gates in Hyde County in accordance with the match requirements specified in G.S. 143-215.74(b)(6).

(b) Funds appropriated to the Department of Natural Resources and Community Development for the 1989-90 fiscal year and for the 1990-91 fiscal year in this act and in Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, for the Agriculture Cost Share Program for Nonpoint Source Pollution Control shall be used to implement the Agriculture Cost Share Program statewide beginning in the 1989-90 fiscal year. Of these funds, the Department of Natural Resources and Community Development shall use the sum of $64,826 for the 1989-90 fiscal year to establish two positions to administer the Agriculture Cost Share Program and shall use the sum of $64,826 for the 1990-91 fiscal year to continue these two positions.

PART XXI.-----MISCELLANEOUS PROVISIONS

Requested by: Senator Royall, Representative Diamont
-----EFFECT OF HEADINGS

Sec. 162. The headings to the Parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Senator Royall, Representative Diamont
-----EXECUTIVE BUDGET ACT REFERENCE

Sec. 163. The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

Requested by: Senator Royall, Representative Diamont
-----COMMITTEE REPORT

Sec. 164. The Joint Conference Report on Proposed Committee Substitute for Senate Bill 44, dated August 7, 1989, which was distributed in the Senate and the House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for such purposes shall be considered a part of this act.

Requested by: Senator Royall, Representative Diamont
-----EFFECT OF MOST LIMITATIONS AND DIRECTIONS IN THE CURRENT OPERATIONS ACT OF 1989 APPLY

Sec. 165. Except where expressly repealed or amended by this act, the provisions of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, are not affected by this act.

Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 1989-91 fiscal biennium in Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations of this act for those same purposes.

Requested by: Senator Royall, Representative Diamont
-----MOST TEXT APPLIES ONLY TO 1989-91

Sec. 166. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1989-91

biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1989-91 biennium.

Requested by: Senator Royall, Representative Diamont
-----SEVERABILITY CLAUSE

Sec. 167. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Senator Royall, Representative Diamont
-----EFFECTIVE DATE

Sec. 168. Except as otherwise provided, this act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 10th day of August, 1989.

S.B. 740 **CHAPTER 753**

AN ACT TO AUTHORIZE THE NORTH CAROLINA DEPARTMENT OF REVENUE TO ENTER INTO AGREEMENTS WITH THE EASTERN BAND OF CHEROKEE INDIANS REGARDING REFUNDS OF MOTOR FUELS AND SPECIAL FUELS TAXES, TO INCREASE THE NUMBER OF COUNTIES ELIGIBLE FOR CLASSIFICATION AS A SEVERELY DISTRESSED COUNTY FROM TWENTY TO TWENTY-FIVE, AND TO PROVIDE ELIGIBILITY CRITERIA FOR TAX CREDITS FOR SEVERELY DISTRESSED COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. By virtue of the Act of June 4, 1924, Pub. L. No. 68-191, Ch. 253, 43 Stat. 370, Congress and the United States courts have recognized the Eastern Band of Cherokee Indians as possessing sovereign legal rights over their members and their trust lands.

Sec. 2. The following definitions apply in this act:

(1) Chief. The Principal Chief of the Eastern Band of the Cherokee Indians.

(2) Council. The Tribal Council of the Eastern Band of the Cherokee Indians.

(3) Tribe. The Eastern Band of the Cherokee Indians.

Sec. 3. Notwithstanding any other provision of law concerning refunds of motor fuels and special fuels taxes, the Department of Revenue may enter into a memorandum of understanding or an

agreement with the Eastern Band of Cherokee Indians to make refunds of motor fuels and special fuels taxes to the Tribe in its collective capacity on behalf of its members who reside on or engage in otherwise taxable transactions within Cherokee trust lands. The memorandum or agreement shall be approved by the Council and signed by the Chief on behalf of the Tribe and shall be signed by the Secretary of Revenue on behalf of the Department of Revenue. The memorandum or agreement may not affect the right of an individual member of the Tribe to a refund and shall provide for deduction of amounts refunded to individual members of the Tribe from the amounts to be refunded to the Tribe on behalf of all members. The memorandum or agreement may be effective for a definite or indefinite period, as specified in the agreement.

Sec. 4. These refunds shall be drawn from the Highway Fund.

Sec. 4.1. (a) G.S. 105-130.40(c), as amended by Chapter 111 of the 1989 Session Laws, reads as rewritten:

"(c) County Designation. A severely distressed county is a county designated as such by the Secretary of the Department of Commerce. Each year, on or before December 31, the Secretary of the Department of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the ~~twenty~~ twenty-five highest in the State. The Secretary shall assign to each county in the State a distress factor which is the sum of (1) the county's rank in a ranking of counties by rate of unemployment from lowest to highest and (2) the county's rank in a ranking of counties by per capita income from highest to lowest. In measuring rates of unemployment and per capita income, the Secretary shall use data from the North Carolina Employment Security Commission and the United States Department of Commerce for the most recent thirty-six month period for which data is available. A designation as a severely distressed county is effective only for the calendar year following the designation."

(b) G.S. 105-130.40, as amended by Chapter 111 of the 1989 Session Laws, is amended by adding a new subsection to read:

"(b1) Eligibility. - A corporation is eligible for the tax credit allowed by this section only if it obtained a credit under this section for taxable year 1988 or the Department of Commerce determines that it engages in the manufacturing of goods, or that it engages in an industrial activity such as the processing of foods, raw materials, chemicals and process agents, goods in process, or of finished products."

(c) G.S. 105-151.17(c), as amended by Chapter 111 of the 1989 Session Laws, reads as rewritten:

"(c) County Designation. -- A severely distressed county is a county designated as such by the Secretary of the Department of Commerce. Each year, on or before December 31, the Secretary of the Department of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the ~~twenty~~ twenty-five highest in the State. The Secretary shall assign to each county in the State a distress factor which is the sum of (1) the county's rank in a ranking of counties by rate of unemployment from lowest to highest and (2) the county's rank in a ranking of counties by per capita income from highest to lowest. In measuring rates of unemployment and per capita income, the Secretary shall use data from the North Carolina Employment Security Commission and the United States Department of Commerce for the most recent thirty-six month period for which data is available. A designation as a severely distressed county is effective only for the calendar year following the designation."

(d) G.S. 105-151.17, as amended by Chapter 111 of the 1989 Session Laws, is amended by adding a new subsection to read:

"(b1) Eligibility. - A taxpayer is eligible for the tax credit allowed by this section only if the taxpayer obtained a credit under this section for taxable year 1988 or the Department of Commerce determines that the taxpayer engages in the manufacturing of goods, or that he engages in an industrial activity such as the processing of foods, raw materials, chemicals and process agents, goods in process, or of finished products."

Sec. 4.2. Section 4.1 of this act is effective for taxable years beginning on or after January 1, 1989, and notwithstanding the provisions of G.S. 105-130.40(c) and G.S. 105-151.17(c) requiring designations to be made on or before December 31 of a year to be effective the following year, the Secretary of the Department of Commerce shall make any designations authorized by Section 4.1 of this act before September 1, 1989, and those designations shall be effective for 1989.

Sec. 5. Sections 1 through 4 of this act are effective retroactively to January 1, 1985.

In the General Assembly read three times and ratified this the 10th day of August, 1989.

S.B. 1042 **CHAPTER 754**

AN ACT TO MAKE APPROPRIATIONS TO PROVIDE CAPITAL IMPROVEMENTS FOR STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, EXCEPT FOR AID TO

CERTAIN GOVERNMENTAL AND NONGOVERNMENTAL ENTITIES.

The General Assembly of North Carolina enacts:

-----TITLE/PURPOSES

Section 1. This act shall be known as the "Capital Improvement Appropriations Act of 1989".

*****

An outline of the provisions of the act follows this section. The outline shows the heading "-----CONTENTS/INDEX-----" and it lists by general category the descriptive captions for the various sections and groups of sections that make up the act.

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(This outline is designed for reference only, and the outline and the corresponding entries throughout the act in no way limit, define, or prescribe the scope or application of the text of the act.)

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Sec. 2. The appropriations made by the 1989 General Assembly for capital improvements are for constructing, repairing or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

PART I.-----PROCEDURES FOR DISBURSEMENTS

Sec. 3. The appropriations made by the 1989 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution or agency, until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, he shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 1989 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act.

PART II.-----CAPITAL IMPROVEMENTS/GENERAL FUND

Sec. 4. Appropriations are made from the General Fund for use by the State departments, institutions, and agencies to provide for capital improvement projects according to the following schedule:

	1989-90	1990-91
Department of Administration (Total)	$27,104,500	$18,400,000
1. Construction of New Steam Plant - State Government Complex in Raleigh	7,054,500	-
2. Reserve for Asbestos Removal	750,000	-

3.	Life Safety Corrections - State Government Complex	100,000	-
4.	North Carolina Aquariums - Emergency Repairs and Renovations	300,000	-
5.	Construction of New Revenue Building	18,000,000	18,000,000
6.	Veterans Cemetery Funds	400,000	400,000
7.	Indian Cultural Center - Planning and Construction	500,000	-
Department of Agriculture (Total)		8,275,600	-
1.	Construction of New Agronomics Lab	7,100,000	-
2.	Garden Center Building - Charlotte Regional Farmers' Market	320,600	-
3.	Purchase of Harborside Building - Beaufort	355,000	-
4.	Irrigation System/Border Belt Tobacco Research Station		
	Total Requirements		90,800
	Less: Receipts from Timber Sales		90,800
	Appropriation	-	-
5.	Piedmont Triad Market - Planning for first Phase of Development	500,000	-
Department of Transportation			
1.	Vietnam Veterans Memorial Park - Establishment of Park on Interstate 85 (Contingent upon match of $1 non-		

State for each $2 of State funds.)	150,000	-
Board of Governors - University of North Carolina (Total)	70,399,600	1,677,800
1. Board of Governors		
a. Funding for Remaining Projects of 1988 Supplemental Requests	10,000,000	-
b. Reserve for Repairs/Renovations; Utilities, Repairs and Improvements; Roads, Walks, and Drives; OSHA and Barrier Removal	6,000,000	-
c. Reserve for Land Acquisition	1,000,000	-
d. Reserve for Area Health Education Centers - Construction Grants	1,500,000	-
2. N.C. State University		
a. Engineering Graduate Research Center	6,000,000	-
b. Agricultural Program - Animal Lab Facility - Planning	200,000	-
c. Centennial Campus Center - Matching Funds	2,000,000	-
3. East Carolina University		
a. Joyner Library Addition	7,000,000	-
b. Center for Regional Advancement	1,000,000	-
4. East Carolina University - Medical School Vivarium Addition Planning	364,000	-
5. UNC - Charlotte Classroom/Academic Support Facility - Planning	840,000	-
6. Fayetteville State University Construction of Indoor Health/		

	Physical Education Facility	8,000,000	1,677,800
7.	Appalachian State University		
	a. Student Activities Center	3,000,000	-
	b. Academic Support Services Bldg.-Planning	1,000,000	-
8.	UNC - Asheville Conference Center	4,000,000	-
9.	UNC - Wilmington Physical Sciences Bldg./ Renovation of Deloack Hall - Planning	656,000	-
10.	Elizabeth City State University Supplement for Dorm - Planning	131,000	-
11.	Pembroke State University Administration Building - Planning	276,000	-
12.	N. C. Arboretum Projects as outlined in Board of Governor's Request	1,250,000	-
13.	N. C. Central University Conversion of Women's Gym to Data Processing Center - Planning	158,000	-
14.	University of North Carolina at Chapel Hill		
	a. School of Social Work Building	4,140,500	-
	b. School of Business Building (Matching Funds of $5 million)	7,500,000	-
15.	University of North Carolina Hospitals at Chapel Hill Fire Alarm/Sprinkler System Upgrade	4,003,100	-

16. Western Carolina University Completion of Belk Building/ Asbestos Removal - Planning	76,000	-
17. Winston-Salem State University Student Services/Cafeteria/ Student Union Complex - Planning	305,000	-
Department of Commerce (Total)	8,000,000	-
1. Hazardous Waste Treatment Commission - Reserve for Site Acquisition	2,000,000	-
2. State Ports Authority Development		
a. Morehead City Port	3,000,000	-
b. Wilmington Port	3,000,000	-
Department of Community Colleges (Total)	4,571,459	-
1. Completion of Funding for Original 1984 Five Year Capital Needs Plan		
a. Cape Fear Community College	500,000	-
b. Catawba Valley Community College	650,000	-
c. Caldwell Community College and Technical Institute	100,000	-
d. Randolph Community College	1,200,000	-
e. Halifax Community College	410,459	-
f. Isothermal Community College	461,000	-
2. Central Piedmont Community College - To construct third floor addition to the optical disk facility		400,000-
3. Repayment of Construction loans made between colleges	850,000	-
Department of Crime Control		

and Public Safety		
1. National Guard - Expansion/ Modification to Military Center Building in Raleigh	1,774,000	-
Department of Cultural Resources (Total)	1,420,000	-
1. Museum of the Albemarle - Planning	150,000	-
2. Thomas Wolfe Memorial - Supplement to prior years' Funding for the Visitors' Center	75,000	-
3. Zeigler House - Renovation and construction of an addition to be used as a Visitors' Center	463,000	-
4. Charlotte Hawkins Brown State Historic Site - Improvements	482,000	-
5. Spencer Shops - Renovation of the Round House	200,000	-
6. Newbold-White House in Perquimans County - Land Acquisition	50,000	-
Department of Human Resources (Total)	5,900,000	-
1. Life Safety Code Improvement Projects	2,900,000	-
2. Vocational Rehabilitation Program - Purchase of Buildings at Wayne Community College	1,500,000	-
3. Reserve for Area Mental Health Centers	1,500,000	-
Department of Justice		

1. New State Bureau of Investigation Complex	12,186,000	6,322,000
Department of Correction (Total)	2,940,200	1,955,600
1. Reserve for electrical, heating, ventilating repairs at various field units	341,700	347,800
2. Harnett Correctional Center Renovate present dorms	710,700	-
3. Wastewater and water system improvements	1,832,600	133,400
4. Repair and renovation of plumbing at 51 field units	-	517,600
5. Morrison Youth-Fencing for Edwards dorm	55,200	-
6. Renovate Dorm A at the North Carolina Correctional Institution for Women to house a substance abuse treatment program	-	62,800
7. Renovations of Building A at Cherry Hospital in Goldsboro for a DWI Probation/Parole Treatment Facility	-	894,000
Department of Natural Resources and Community Development (Total)	15,098,300	-
1. State Parks System Reserve		
a. Repairs and Renovations/ Improvements	6,000,000	-
b. Land Purchases	2,000,000	-
2. Geological Survey Core		

Repository	250,900	-
3. Reserve for Critical Needs for Construction at Forest Resources County Headquarters	997,400	-
4. Reserve for Beach Access Land Acquisition	500,000	-
5. Reserve for Coastal Land Purchases	1,100,000	-
6. North Carolina - Zoological Park - Completion of the North American Phase	4,250,000	-
Office of State Budget and Management (Total)	25,127,449	23,258,542
1. Reserve for Repairs and Renovations (including demolition of State properties)	10,700,000	-
2. Reserve for Low-Level Radioactive Waste Site Selection	8,000,000	6,000,000
3. Executive Mansion Fund, Inc. - Matching Funds for Restoration, Acquisitions and Operations	1,000,000	-
4. Prison Construction		
a. Columbus County Unit	3,619,581	-
b. Harnett Correctional Center	-	4,192,984
c. Pender County Unit	-	3,953,533
d. Construction of a new 652-bed receiving and processing center -	2,310,651	
e. Alamance County Unit	31,883	1,171,345
f. Duplin County Unit	43,804	1,551,427
g. Anson County Unit	38,813	1,518,702
h. North Carolina Correctional Institution for Women - Kitchen/		

dining facility improvements	660,168	-
i. Fountain Correctional Center Renovate building for female misdemeanant processing	332,200	-
j. Nash - Sign Plant (ENTERPRISES)	701,000	-
k. Harnett - Metal Products Plant (ENTERPRISES)	-	1,531,800
l. Harnett - Tailoring Plant (ENTERPRISES)	-	1,028,100
GRAND TOTAL - GENERAL FUND	$182,947,108	$51,613,942

PART III.-----CAPITAL IMPROVEMENTS/ GENERAL FUND/ STATE AID

Sec. 5. Appropriations are made from the General Fund for use by the State departments, institutions, and agencies to provide for capital improvement/State aid projects according to the following schedule:

	1989-90	1990-91
Department of Commerce		
1. Biotechnology Center - Construction Grant for Matching Funds on a Dollar-for-Dollar Basis for New Headquarters Building	1,000,000	-
Department of Cultural Resources		
1. Reserve - Library Construction	500,000	-
Office of State Budget and Management (Total)	14,576,604	4,000,000
1. Clean Water and Sewer Program	10,000,000	-
2. Satellite Jail/Work Release Units	4,576,604	4,000,000
Department of Natural Resources and Community Development (Total)	2,650,000	-

1. Reserve for Civil Works Projects	2,200,000	-
2. Small Watershed Grant Program	450,000	-
Office of State Treasurer		
Solid Waste Revolving Fund	5,000,000	-
GRAND TOTAL - GENERAL FUND STATE AID	$23,726,604	$4,000,000

PART IV.-----CAPITAL IMPROVEMENTS/HIGHWAY FUND

Sec. 6. Appropriations are made from the Highway Fund for use of the Department of Transportation to provide for capital improvement projects according to the following schedule:

Division of Highways

	1989-90	1990-91
1. Bridge Maintenance Office and Warehouse - Boone	$200,900	-
2. Equipment Shop - Burnsville	566,600	-
3. Equipment Shop - Shallotte	438,000	-
4. Maintenance Office - Monroe	217,800	-
5. Repair Shop - Williamston	492,900	-
6. Materials and Test Lab - Statesville 283,800	-	
7. Maintenance Yard Security Fence - Albemarle 40,900	-	
8. Maintenance Yard Security Fence - Mt. Pleasant	18,900	-
9. Roof Replacement - Shelby	15,000	-
10. Maintenance Yard Security Fence - Lincolnton 22,700	-	
11. Maintenance Yard Security Fence - Shelby	29,600	-
12. Maintenance Facility - Ocracoke	124,600	-
13. Roof Replacements - Statewide	226,150	-
14. Landscape/Sign Shop Renovation and Addition - Boone	43,400	-
15. Rest Area - U.S. Highway 264 in		

	Beaufort County	335,100	-
15.1.	Ferry Office and Restrooms - Pamlico River	125,000	-
16.	Salt Storage Shed - Hudson	69,100	-
17.	Landscape/Sign Shop Renovation - Elkin	9,900	-
18.	Maintenance Building Addition - N. Wilkesboro	38,000	-
19.	Maintenance Building Addition - Smethport 35,600	-	
20.	Sign Shop - Union	100,000	-
21.	Storage Warehouse - Warrensville	53,900	-
22.	Foreman and Inspector Office Addition - Graham	19,400	-
23.	Bridge Maintenance Office Addition - Hudson	11,800	-
24.	Bridge Maintenance Office Addition - Monroe	24,700	-
25.	Bridge Maintenance Office Addition - Burgaw	24,700	-
26.	Roof Replacement - Central Equipment Office - Raleigh	164,100	-
27.	Bridge Maintenance Office Building - Hendersonville	87,600	-
28.	Blacksmith/Warehouse/Lumber Shed - Hendersonville	181,000	-
29.	Equipment Shop - Mocksville	100,000	-
30.	Repair Shop - Creswell	50,000	-
31.	Landscape Office and Warehouse - Graham	111,900	-
32.	Office, Assembly Room, and Office Addition - Maury	462,600	-
33.	Office, Assembly Room, and Office Addition - Kinston	25,100	-
34.	Roof Replacement - Storage Warehouse - Raleigh	10,400	-
35.	Division Equipment Shop - Carthage	200,000	-
36.	Equipment Shop - Sandy Ridge	60,000	-
37.	Landscape Warehouse - Wentworth	77,200	-
38.	Bridge Maintenance Office Building - Franklin	88,300	-
39.	Paint Warehouse and Truck Shed - Camp Burton	70,200	-

40.	Bridge Maintenance Office Renovation - Lexington	23,100	-
41.	District Equipment Shop - Asheboro	100,000	-
42.	Equipment Shop - Marion	90,000	-
43.	Maintenance Warehouse - Hillsborough	86,300	-
44.	Bridge Maintenance Office Building - Union	88,700	-
45.	New Division Complex - Fayetteville	500,000	-
46.	Maintenance Facility - Cherry Branch	250,000	-
47.	Maintenance Facility - Cedar Island	250,000	-
48.	Division Office Addition - Durham	655,000	-
49.	Manns Harbor - Cost Overrun on Marine Maintenance Facility	1,000,000	-
	Division of Highways Total	8,299,950	-

Division of Motor Vehicles

1.	Building Additions (5 Locations)	892,500	-
2.	Resurface Parking Lots (6 Locations)	91,800	-
3.	Roof Replacements (7 Locations)	89,300	-
4.	Warehouse and Office Building - Raleigh	1,681,300	-
	Division of Motor Vehicles Total	2,754,900	-

Department of Crime Control and Public Safety

1.	Highway Patrol - Upgrade and Replace Underground Gas Storage Tanks	212,350	-
2.	Highway Patrol-Training Center		
	a. Helicopter Hangar	82,800	-
	b. Air Condition Dining Facility	51,700	-
3.	Highway Patrol - Design Fee for the Troop H. Headquarters Building, Charlotte/Monroe Area	42,380	-
4.	Highway Patrol - Additional Parts Storage for State Agency Vehicles	16,200	-
	Highway Patrol Total	405,430	-

GRAND TOTAL - HIGHWAY FUND	$11,460,280	-

PART V.-----NONRECURRING OPERATING APPROPRIATIONS/ GENERAL FUND

Sec. 7. Appropriations are made from the General Fund for nonrecurring purposes according to the following schedule:

	1989-90	1990-91
Department of Commerce		
1. Film Office Reserve Fund	$100,000	-
Department of Crime Control and Public Safety		
1. Division of Emergency Management - Purchase emergency management radios for coastal counties	150,000	-
Department of Natural Resources and Community Development (Total)	531,080	-
1. Forest Resources Division Helicopters for fire suppression services	39,000	-
2. Division of Marine Fisheries		
a. Oyster Rehabilitation Program	392,080	-
b. Purchase of Aircraft	100,000	-
University of North Carolina (Total)	1,600,000	-
1. Board of Governors - Lump Sum Match for USDA Challenge Grant to N.C. A&T State University	600,000	-
2. UNC - Charlotte - Applied Research Center Equipment	1,000,000	-
GRAND TOTAL - GENERAL FUND	$2,381,080	-

PART VI.----NONRECURRING OPERATING APPROPRIATIONS/ HIGHWAY FUND

Sec. 8. Appropriations are made from the Highway Fund for nonrecurring purposes according to the following schedule:

	1989-90	1990-91
Department of Transportation		
1. For erection of Hurricane Emergency Evacuation Signs for Coastal Areas Subject to Hurricane Damage	$100,000	-

PART VII.----NONRECURRING STATE AID APPROPRIATIONS/ GENERAL FUND

Sec. 9. Appropriations are made from the General Fund for nonrecurring purposes according to the following schedule:

	1989-90	1990-91
Department of Commerce (Total)	$5,500,000	-
1. Industrial Economic Development Fund	3,500,000	-
2. North Carolina Housing Finance Agency-Housing Partnership Program	2,000,000	-
Department of Human Resources (Total)	700,000	-
1. Division of Mental Health First Step Farm for Women	100,000	-
2. Division of Health Services		
a. Bowman-Gray School of Medicine Epilepsy Program	100,000	-
b. United Cerebral Palsy Group Homes and Developmental Centers	200,000	-
c. Hemophilia Assistance Program	50,000	-

3.	State Aid to Non-State Agencies Florence Crittenden Services, Inc.	250,000	-
Department of Natural Resources and Community Development (Total)		1,750,000	-
1.	Division of Community Assistance		
	a. Main Street Cities Program	1,000,000	-
	b. Community Action Programs	250,000	-
2.	Land Records Management Matching funds for grants	500,000	-
Office of State Budget and Management (Total)		7,298,000	-
1.	Piedmont Triad Airport Authority	700,000	-
2.	Discovery Place, Charlotte, N.C.	250,000	-
3.	North Carolina Performing Arts Center in Charlotte	2,000,000	-
4.	Roanoke Island Historical Association - Land purchase	250,000	-
5.	Piedmont Triad Regional Water Authority 1,000,000	-	
6.	A.A. Cunningham Air Museum Foundation	500,000	-
7.	Community Self-Help, Inc.	2,000,000	-
8.	Cumberland County Area Mental Health-Myrover-Reese Substance Abuse Treatment Facility	125,000	-
9.	Marine Research and Development Crescent	98,000	-
10.	Thelonious Monk Institute of Jazz	250,000	-

11. North Carolina International Folk Festival, Inc. Folkmoot USA, Haywood County	75,000	-
12. Montgomery County - Economic Development	50,000	-
GRAND TOTAL - GENERAL FUND	$15,248,000	-

PART VIII.----SPECIAL PROVISIONS

Requested by: Senator Royall, Representative Diamont
-----AREA MENTAL HEALTH CENTER RESERVE

Sec. 10. Of the funds appropriated in this act to the Department of Human Resources for a Reserve for Area Mental Health Centers, the Department shall allocate no more than $500,000 for any one area mental health center.

Requested by: Senator Royall, Representative Diamont
-----UNC CONSTRUCTION FUNDS/RESTRICTED RESERVE

Sec. 11. Of the funds appropriated to the Board of Governors of The University of North Carolina for construction, the following amounts are to be placed in a restricted reserve:

(1) North Carolina State University Engineering Graduate Research Center	$6,000,000
(2) University of North Carolina - Chapel Hill	
(a) School of Business	6,500,000
(b) Social Work Building	4,140,500
(3) East Carolina University - Joyner Library	6,000,000
(4) University of North Carolina at Asheville Conference Center	4,000,000
	$26,640,500

None of these funds shall be obligated during fiscal year 1989-90, and, shall be held in reserve until the General Assembly appropriates the additional construction needs for these projects.

Requested by: Senator Royall, Representative Diamont
-----NEWBOLT-WHITE HOUSE/STATE LAND

Sec. 12. Land purchased from funds appropriated in this act for land acquisition for the historic Newbolt-White House in Perquimans County shall be deeded to the State.

Requested by: Senator Ward, Representatives Holmes, G. Wilson
-----COMMUNITY COLLEGE CAPITAL FUNDS/PERMANENT

Sec. 13. Funds appropriated for the 1989-90 fiscal year to the Department of Community Colleges and allocated to local institutions for capital projects shall remain available until expended and may not revert to the General Fund.

Requested by: Senators Conder, Plyler, Representative Tart
-----EXPANDED FOCUSED INDUSTRIAL TRAINING PROGRAM

Sec. 14. Notwithstanding the provisions of G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the Department of Community Colleges the sum of $350,000 for the 1989-90 fiscal year and the sum of $500,000 for the 1990-91 fiscal year to expand the Focused Industrial Training Program administered by the Department of Community Colleges.

The Department shall report on the use of these funds to the chairmen of the Senate and House of Representatives committees on appropriations and appropriations on education, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division, prior to January 1, 1991.

Requested by: Senators Ward, Tally, Representative Diamont
-----UNC EXTENSION FEES/CHARGES REVIEW

Sec. 15. The Board of Governors of The University of North Carolina shall review its policies on fees and charges for extension courses offered at any of its constituent institutions to ensure that the fees provide reasonable access to exclusive degree offerings in geographic areas, that the fees are consistent with statutes providing for different charges for residents and nonresidents, and that the fees do not lead to unnecessary competition among colleges in the same geographic services area. The Board shall report to the General Assembly by May 1, 1990, on its findings and on any changes or proposed changes in its extension course fees policies.

Requested by: Representatives Holmes, G. Wilson
-----VETERANS CEMETERIES FUNDS

Sec. 16. (a) Of the funds appropriated to the Department of Administration by Section 4 of this act $400,000 for the 1989-90 fiscal year and $400,000 for the 1990-91 fiscal year shall be divided equally each year between the 3rd and 11th Congressional Districts for

veterans cemeteries to be established in accordance with Article 8A of Chapter 65 of the General Statutes. The funds for each fiscal year shall be used for fees, advance planning, site improvements, and construction costs.

(b) Funds allocated by subsection (a) of this section shall provide for the employment of one project manager and administrative expenses. The project manager shall be a time-limited position of no more than two years at a pay grade 74, subject to the provisions of Chapter 126 of the General Statutes.

Requested by: Representative Diamont
-----STATE ACCOUNTING SYSTEM PROJECT FUNDS

Sec. 17. Effective July 1, 1989, the sum of $2,000,000 shall be transferred from contributed capital of the State Information Processing Services (SIPS) internal service fund (Code 74160) to the Office of the State Controller general fund (Code 14160), to be used by the Office of the State Controller for the ongoing State Accounting System Project.

Requested by: Representatives Easterling, Michaux
-----NORTH CAROLINA FINANCIAL SYSTEMS MASTER PLAN REPORT

Sec. 18. The Office of State Controller, in expending the funds allocated in this act for development of the Statewide Accounting System shall prepare a written "North Carolina Financial Systems Master Plan" that was discussed and recommended in the Final Report of the State Information Processing Needs and Cost Study Commission. The written "North Carolina Financial Systems Master Plan" shall (i) address all statewide financial systems rather than just the general ledger, accounts payable, and purchasing, (ii) present a coordinated architecture and implementation approach across all systems, including The University of North Carolina and the Department of Transportation, (iii) develop a solid analysis of financial systems, in both the line and central agencies, and (iv) present a detailed description of the Management Science of America's financial management information systems package, its capabilities, and how it will assist the State in meeting its budgeting, accounting, payroll, and financial auditing needs, if that package is implemented by the Office of the State Controller. The Office of the State Controller shall prepare this written Master Plan and deliver it to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management no later than March 31, 1990.

Requested by: Senator Royall, Representatives Holmes, G. Wilson
-----LIBRARY CONSTRUCTION FUNDS

Sec. 19. (a) Of the funds appropriated to the Department of Cultural Resources in Section 5 of this act, $500,000 for the 1989-90 fiscal year shall be used for the construction or renovation of public libraries.

(b) A maximum of one construction or renovation grant per public library system may be awarded. Each construction or renovation grant shall be for no more than ten percent (10%) of the funds allocated by this section.

(c) All construction or renovation grants to public libraries shall be contingent on a local dollar-for-dollar match. Land may be used to satisfy this match requirement.

Requested by: Representatives Beall, Ramsey
-----FOLKMOOT USA FUNDS

Sec. 20. Of the funds appropriated to the Office of State Budget and Management, the sum of $75,000 shall be allocated to the North Carolina International Folk Festival, Inc., (Folkmoot USA), in Haywood County for the 1989-90 fiscal year to further its international cultural exchange of good will in North Carolina.

Requested by: Representative Diamont
-----NORTH CAROLINA PERFORMING ARTS CENTER IN CHARLOTTE/USE REQUIREMENTS

Sec. 21. If any funds are appropriated for the North Carolina Performing Arts Center in Charlotte for the 1989-90 fiscal year or for the 1990-91 fiscal year, the Center shall provide the use of its facilities free to the North Carolina Symphony and to any other State-supported performing arts group when performing for the State's public school children.

Requested by: Representatives Holmes, G. Wilson
-----HENDERSON FARMERS MARKET REALLOCATION

Sec. 22. Of the funds appropriated to the City of Henderson, Vance County, in Chapters 830, 1085, and 1094 of the 1987 Session Laws, to establish a new Farmers Market site or to improve the existing facility, those funds remaining unencumbered and unexpended on the date this act is ratified, shall be used by the City of Henderson to develop new parking facilities, or improve existing ones, for public parking in connection with the City's ongoing downtown revitalization efforts.

Requested by: Representatives Holmes, G. Wilson

-----MASONBORO ISLAND AND BUXTON WOODS FUNDS/USE

Sec. 23. Funds appropriated for the purchase of land at Masonboro Island and for the purchase of land at Buxton Woods shall be used only for those purposes. Notwithstanding any other provision of law, these funds may not be used to purchase any other land or for any other purpose.

Requested by : Representative Diamont

-----MUSEUM ADVANCE PLANNING FUNDS

Sec. 24. Notwithstanding Section 181 of Chapter 1014 of the 1985 Session Laws, Regular Session 1986, unexpended funds appropriated in that act to the Office of State Budget and Management for Reserve for Advance Planning shall be used for the advance planning costs of the North Carolina Museum of Natural Science.

Requested by: Representative Diamont

-----TORNADO ASSISTANCE FUNDING

Sec. 25. If that portion of the Contingency and Emergency Fund that is designated for purposes outlined in G.S. 143-23(a1)(3), (4), and (5) are depleted and if funds cannot be made available from the budget of the Department of Crime Control and Public Safety, the Office of State Budget and Management may use up to $150,000 of the funds appropriated in the 1989-90 fiscal year for the Repairs and Renovations Reserve to support the required federal match for federal grants received resulting from the May 1989 tornadoes.

Requested by: Senator Marvin, Representatives Holmes, G. Wilson

-----STATE LAW ENFORCEMENT FIRING RANGE STUDY

Sec. 26. The Department of Crime Control and Public Safety and the Department of Justice shall study the feasibility of constructing a firing range to be used by the Highway Patrol, the State Bureau of Investigation, and other State law enforcement agencies, and shall submit a report and recommendations to the Senate and House Appropriations Committees on Justice and Public Safety and to the Fiscal Research Division by May 1, 1990. The report shall include a list of all firing ranges currently available for use by State law enforcement agencies, an analysis of the man-hours lost due to travel to and from these facilities, the cost of maintaining the present facilities, any other costs associated with the current arrangement for the use of firing ranges by the State law enforcement agencies, and recommendations of possible sites for the location or construction of a firing range for the use of all State law enforcement personnel.

Requested by: Representatives Huffman, Justus

-----LAW ENFORCEMENT DRIVING TRACK FUNDS

Sec. 27. Of the unexpended funds appropriated for the 1987-88 fiscal year to the Department of Crime Control and Public Safety in Section 5 of Chapter 795 of the 1987 Session Laws for the law enforcement precision driving track, $239,400 shall be used for the construction of a control tower.

Requested by: Senator Marvin, Representatives Holmes, G. Wilson

-----PRISON CONSTRUCTION

Sec. 28. (a) Of the funds appropriated in Section 4 of this act to the Office of State Budget and Management for the purpose of construction of prison facilities, the Office of State Budget and Management may contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of prison facilities without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-132, 143-134, 143-131, 143-135.26, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(b), and 133-1.1(g). All contracts for the design, construction, or demolition of these facilities shall include a penalty for failure to complete the work by a specified date.

(b) The Office of State Budget and Management shall report to the Cochairmen of the Prison Construction Subcommittee of the Joint Legislative Commission on Governmental Operations at least monthly and shall report quarterly to the Chairmen of the Appropriations Committee and the Base Budget Committee in the Senate, the Chairman of the Appropriations Committee in the House, the Chairmen of the Senate and House Justice and Public Safety Appropriations Committees, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on the funds appropriated by this section. The report shall include information on which contractors have been selected, what contracts have been entered into, the projected and actual occupancy dates of facilities contracted for, the number of prison beds to be constructed on each project, the location of each project, and the projected and actual cost of each project.

(c) The Office of State Budget and Management and the Department of Correction shall provide quarterly reports to the Chairmen of the Appropriations Committee and the Base Budget Committee in the Senate, the Chairman of the Appropriations Committee in the House, the Chairmen of the Senate and House Justice and Public Safety Appropriations Committees, the Joint Legislative Commission on Governmental Operations, and the Fiscal

Research Division on expenditures of funds appropriated by the 1989 General Assembly for capital projects of the Department of Correction. The reports shall include information on the location and the projected and actual cost of each project, both on contract and in-house, which contractors have been selected and what contracts have been entered into, and the projected and actual occupancy dates of the facilities. These reports shall continue to be made until the completion of these projects.

Requested by: Senator Marvin, Representatives Holmes, G. Wilson
-----LAND ACQUISITION COST FOR NEW DIAGNOSTIC UNIT

Sec. 29. Of the funds appropriated to the Office of State Budget and Management for the construction of a new diagnostic unit, no more than the sum of $1,000,000 shall be allocated for the cost of land acquisition in fiscal year 1990-91.

Requested by: Senator Marvin, Representatives Holmes, G. Wilson
-----CONSTRUCTION OF CHAPEL AT JOHNSTON COUNTY PRISON UNIT

Sec. 30. Funds previously appropriated in Section 4 of Chapter 1014 of the 1985 Session Laws, Regular Session 1986, and in Sections 3 and 125 of Chapter 1086 of the 1987 Session Laws, for the construction of a chapel at the Johnston County prison unit, may be used to provide a chapel through either the construction of a new building, the construction of an addition to a proposed building, or the construction of an addition to an existing building at the Johnston County prison unit. The Director of the Budget shall determine which of these alternatives shall be used for constructing the chapel. These funds shall not revert but shall remain available until the project is complete.

Requested by: Representative Holmes
-----DEPARTMENT OF CORRECTION LAND PURCHASE/ WASTEWATER TREATMENT FUNDS

Sec. 31. The Department of Correction may spend up to $190,000 of funds allocated from the 1986 Repairs and Renovations Reserve to purchase land at the Washington County Correctional Center, the Gates County Correctional Center, and the Moore County Correctional Center to meet environmental requirements for upgrading wastewater treatment systems.

Requested by: Representative Barnes
-----WOMEN'S CORRECTIONAL CENTER AIR CONDITIONING

Sec. 32. (a) Of the funds appropriated to the Office of State Budget and Management for the 1989-90 fiscal year for the Repairs and Renovations Reserve, up to $61,500 may be used to repair or replace the heating and air conditioning system at the chapel of the Correctional Center for Women at Raleigh.

(b) The Department of Correction may accept contributions to offset the cost of repairing or replacing the heating and air conditioning system at the Correctional Center for Women at Raleigh, and may expend such funds for that purpose.

Requested by: Representative Diamont
-----CHERRY HOSPITAL/ O'BERRY/ GOLDSBORO SEWER FUNDS

Sec. 33. Funds appropriated in Section 4 of Chapter 795 of the 1987 Session Laws to the Department of Human Resources for Cherry Hospital-Renovation of Water Plant and Wastewater Treatment Plant, may be used for the costs associated with the connection of Cherry Hospital and O'Berry Center to the City of Goldsboro's sewer system, improvements to the Cherry Hospital and O'Berry Center water system, and expansion of the city sewer system required as a result of the connection.

Requested by: Representatives Hackney, Redwine
-----SOLID WASTE MANAGEMENT TRUST FUND/WASTE STREAM ANALYSIS

Sec. 34. Of the funds allocated from the Special Reserve for Oil Overcharge Funds to the North Carolina Housing Trust Fund in Section 2 of Chapter 841 of the 1987 Session Laws, the sum of $500,000 shall be reallocated to the Department of Commerce for the 1989-90 fiscal year to be used for a waste stream analysis by the Department of Human Resources. These funds shall be matched on a one-to-one basis by private entities by April 30, 1990. These funds shall be used to conduct "waste stream" research in North Carolina counties. This research shall be contracted out by the Secretary of the Department of Human Resources on a competitive bid basis to an organization or firm that responds successfully to a "request for proposals" (RFP) issued at the direction and approval of the Secretary of the Department of Human Resources. The RFP shall be issued by the Secretary and awarded no later than December 31, 1989. A final report shall be issued to the Secretary of the Department of Human Resources and the General Assembly at the convening of the Regular Session 1991. The Secretary shall appoint a special advisory panel, composed of representatives from organizations participating in the matching grants program, to comment on contractors' response to the

RFP. The Secretary, however, shall have final responsibility for awarding the contract.

The RFP shall contain provisions for quarterly progress reports to be issued by the contractor to the Secretary, who shall also make provisions for distributing reports to private entities participating in the matching grants provision. Reports to the appropriate committees of the General Assembly shall be determined by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

The waste stream analysis research study, at a minimum, shall include scientific and statistically significant sampling of solid waste material in each of North Carolina's 120 landfills; or, it shall be determined to contain sufficient statistically reliable data to project, at a sixty percent (60%) confidence level, the content and volume of any existing North Carolina landfill or other properly permitted solid waste disposal facility. Based on these specific findings, additional written outcomes of this waste stream analysis shall be the following:

(1) Recommended solid waste disposal policies, appropriate for local governments, that are considered practicable, as well as "state-of-the-art"; that evaluate the financial impact and energy avoidance of recycling and alternative methods of solid waste disposal, including incineration and waste-to-energy options; that are consistent with contractor's findings; that contain specific procedures for monitoring market demand for recyclable goods; that identify potential domestic and foreign markets; that propose collection, storage, and transportation strategies, for both single-county and multi-county collection, recycling, treatment, and disposal; and that identify all relevant operating costs, capital costs, and revenues derived through the sale of recycled waste stream components and energy, related to their implementation;

(2) A recommended solid waste management plan, based upon the policies recommended in subdivision (1) of this section, for the State of North Carolina, including policies the State may consider to provide incentives for recycling facilities to locate in North Carolina; that suggest future strategies the State might consider to insure that its investments produce measurable reductions in solid waste, offer economic alternatives to traditional landfills, and provide increased technical assistance to cities and counties;

(3) The plan, as recommended, shall contain a year-by-year determination of all relevant operating and capital costs, and propose recommended appropriations and/or financing

mechanisms needed for the number of years required for its full implementation;

(4) Finally, the plan shall contain a specific evaluation component which shall describe criteria for measuring progress and results against the plan, and which shall be understood clearly by the general public.

The North Carolina Housing Finance Agency shall transfer the funds reallocated by this subsection to the Department of Human Resources no later than September 1, 1989.

The Department of Commerce shall submit comprehensive annual reports to the General Assembly by May 5, 1990, and January 31, 1991, which detail the use of all funds received in the Stripper Well Litigation that were used or expended by State agencies. Any State department or agency that has received oil overcharge funds shall provide all information requested by the Department of Commerce for the purpose of preparing this report.

Requested by: Representatives B. Ethridge, Redwine

-----PETROLEUM OVERCHARGE ATTORNEY FEES

Sec. 35. (a) Unless prohibited by federal law, rule, or regulation or preexisting settlement agreement, no later than October 1, 1989, the North Carolina Attorney General shall direct the withdrawal of all funds received in the cases of United States v. Exxon and Stripper Well that are held in accounts or reserves located out-of-State for payment of attorney fees and reasonable expenses incurred in connection with oil overcharge litigation authorized by the Attorney General. The Attorney General shall deposit these funds, and all funds to be received from petroleum overcharge funds in the future for attorney fees and reasonable expenses, into the Special Reserve for Oil Overcharge Funds.

(b) All attorney fees and reasonable expenses incurred in connection with oil overcharge litigation shall be paid by the State Treasurer from petroleum overcharge funds that have been received by this State and deposited into the Special Reserve for Oil Overcharge Funds.

(c) Notwithstanding any other provision of law, the Attorney General may authorize the payment of attorney fees and reasonable expenses from the Special Reserve for Oil Overcharge Funds without further action of the General Assembly and funds are hereby appropriated from the Special Reserve for Oil Overcharge Funds for the 1989-90 fiscal year and for the 1990-91 fiscal year for that purpose.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----FORESTRY RESOURCES REGIONAL HEADQUARTERS

Sec. 36. The Department of Natural Resources and Community Development, Division of Forest Resources, may use receipts to construct a regional headquarters facility on the Division's present county headquarters site in Buncombe County. Notwithstanding any other provision of law to the contrary, the Department may use force account construction and labor not to exceed the value of one hundred fifty thousand dollars ($150,000).

Requested by: Senators Basnight, Martin of Pitt, Representatives B. Ethridge, Redwine, Rogers

-----INCUBATOR FACILITIES FUNDING

Sec. 37. (a) Notwithstanding any provision of law to the contrary, funds appropriated in Section 3 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act, to the Department of Commerce for the Technological Development Authority for the 1989-90 fiscal year and for the 1990-91 fiscal year for incubator facilities shall be used to start new incubator facilities. Any funds that have not been allocated for first time grants for new facilities as of May 15 of each fiscal year may be used for grants of up to $200,000 for that fiscal year to grant recipients of prior fiscal years to expand the capacity of existing incubator facilities.

(b) Beginning October 1, 1989, the Technological Development Authority shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division not less than 48 hours prior to the Commission's full meeting. These reports shall include information regarding the use of funds allocated as grants during the previous quarter.

Requested by: Senator Tally, Representatives B. Ethridge, Redwine

-----LAKE RIM FISH HATCHERY REPAIRS

Sec. 38. The Wildlife Resources Commission may use no more than $250,000 for the 1989-90 fiscal year to repair the dam at the Lake Rim Fish Hatchery in Cumberland County.

Requested by: Senators Royall, Martin of Pitt, Representatives Redwine, B. Ethridge

-----STATE PARKS CAPITAL FUNDS

Sec. 39. (a) Of the funds appropriated to the Department of Natural Resources and Community Development in Section 4 of this act for a reserve for the State Parks System:

(1) The sum of $250,000 for the 1989-90 fiscal year shall be used to support one time-limited position in the Department of Natural Resources and Community Development to manage those capital improvement projects that are authorized and funded in Section 4 of this act and to contract with a professional design firm to manage the projects;

(2) The sum of $5,750,000 for the 1989-90 fiscal year shall be used for repairs, renovations, and capital improvements throughout the State park system; and

(3) The sum of $2,000,000 for the 1989-90 fiscal year shall be used to acquire critical parcels of inholdings or corridors and easements identified as critical for inclusion in the State park system.

(b) No later than October 1, 1989, the Department of Natural Resources and Community Development shall provide a list of the repairs, renovations, and capital improvement projects for the 1989-90 fiscal year to the Joint Legislative Commission on Governmental Operations, the Office of State Budget and Management, and the Director of the Fiscal Research Division.

(c) The report required by subsection (b) of this section shall include:

(1) The project names;

(2) A description of the projects funded in the 1989-90 fiscal year;

(3) Funding allocation for these projects;

(4) The dates that the projects began and were completed;

(5) The amount of time required to complete each project;

(6) The actual cost of each project; and

(7) A projection of the appropriations needed for repairs, renovations, and capital improvements throughout the State park system.

(d) No later than October 1 of each year of the biennium, the Department of Natural Resources and Community Development shall provide a list of acquisitions made pursuant to subdivision (3) of subsection (a) of this section for that year of the biennium to the Joint Legislative Commission on Governmental Operations, the Office of State Budget and Management, the Director of the Fiscal Research Division, and the 1991 General Assembly. This report shall include:

(1) Descriptions of the land acquired;

(2) Funding allocation for each acquisition;

(3) The date that each acquisition was finalized;

(4) The actual cost of each acquisition; and

(5) A projection of the appropriations needed to acquire critical inholdings throughout the State park system in the future.

(e) The Director of the Budget may authorize the expenditure of over realized State parks' receipts, in accordance with G.S. 143-23(a1).

Requested by: Representative Diamont
-----MAIN STREET FINANCIAL INCENTIVE FUND

Sec. 40. (a) The funds appropriated in Section 9 of this act to the Division of Community Assistance in the Department of Natural Resources and Community Development for the 1989-90 fiscal year for the Main Street Cities Program shall be allocated to the Main Street Financial Incentive Fund, which is created in subsection (b) of this section, and shall be used pursuant to the remaining subsections of this section.

(b) A revolving fund to be known as the Main Street Financial Incentive Fund is established in the Department of Natural Resources and Community Development. This Fund shall be administered by the Department of Natural Resources and Community Development. The Department of Natural Resources and Community Development shall be responsible for receipt and disbursement of all moneys as provided in this section. Interest earnings shall be credited to the Main Street Financial Incentive Fund.

(c) Moneys in the Main Street Financial Incentive Fund shall be available to the North Carolina cities affiliated with the North Carolina Main Street Center Program. Moneys in the Main Street Financial Incentive Fund shall be used for the following eligible activities:

(1) The acquisition or rehabilitation of properties in connection with private investment in a designated downtown area;
(2) The establishment of revolving loan programs for private investment in a designated downtown area;
(3) The subsidization of interest rates for these revolving loan programs;
(4) The establishment of facade incentive grants in connection with private investment in a designated downtown area;
(5) Market studies, design studies, design assistance, or strategic planning efforts, provided the activity can be shown to lead directly to private investment in a designated downtown area;
(6) Any approved project that provides construction or rehabilitation in a designated downtown area and can be shown to lead directly to private investment in the designated downtown area; and
(7) Public improvements and public infrastructure within a designated downtown area, provided these improvements are necessary to create or stimulate private investment in the designated downtown area.

(d) Any North Carolina city affiliated with the North Carolina Main Street Center Program may apply for moneys from the Main Street Financial Incentive Fund by submitting an application to the Main Street Center in the Division of Community Assistance, Department of Natural Resources and Community Development. Any city affiliated with the North Carolina Main Street Center Program may apply for a grant equal to ten percent (10%) of the projected cost of the proposed project. A city may apply for additional moneys as one or more loans from the Fund. Specifically, a city may apply for a loan for:

(1) Up to fifteen percent (15%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within fifteen years at five percent (5%) interest;

(2) Up to twenty percent (20%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within ten years at eight percent (8%) interest; and

(3) Up to thirty-five percent (35%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within seven years at ten percent (10%) interest.

The application shall list:

(1) The proposed activities for which the moneys are to be used and the projected cost of the project;

(2) The amount of grant moneys and any loans requested for these activities;

(3) Projections of the dollar amount of private investment that is expected to occur in the designated downtown area as a direct result of the city's proposed activities;

(4) Whether local public dollars are required to match any grant plus any loan moneys according to the provisions of subdivision (h)(2) of this section, and if so, the amount of local public dollars required;

(5) An explanation of the nature of the private investment in the designated downtown area that will result from the city's proposed activities;

(6) Projections of the time needed to complete the city's proposed activities;

(7) Projections of the time needed to realize the private investment that is expected to result from the city's proposed activities; and

(8) Identification of the proposed source of funds to be used for repayment of any loan obligations.

The applicant shall furnish additional or supplemental information upon written request.

(e) A committee, comprised of representatives of: the Division of Community Assistance of the Department of Natural Resources and Community Development, the North Carolina Main Street Program, the Local Government Commission, and the League of Municipalities shall:

(1) Review a city's application.

(2) Determine whether the activities listed in the application are activities that are eligible for a loan, and

(3) Determine which applicants are selected to receive moneys from the Main Street Financial Incentive Fund.

A city whose application is denied may file a new or amended application.

(f) A Main Street City that is selected may not receive a grant plus any loans pursuant to this act totaling less than one hundred thousand dollars ($100,000) or more than three hundred thousand dollars ($300,000).

(g) The Department of Natural Resources and Community Development may not disburse moneys for any loans until the city has confirmed a method of repayment of the loan. The terms for repayment established for a given loan shall apply throughout the period of that loan.

The Department of Natural Resources and Community Development shall establish an account in the amount of the grant plus any loans for each city that is selected. These moneys shall be disbursed as expended through warrants drawn on the Department of Natural Resources and Community Development.

(h)(1) A city that has been selected to receive a grant plus any loans shall use the full amount of the grant plus any loans for the activities that were approved pursuant to subsection (e) of this section. Moneys are deemed used if the city is legally committed to spend the moneys on the approved activities.

(2) If a city has received approval to use the grant plus any loans for public improvements or public infrastructure, that city shall be required to raise, before moneys for these public improvements may be drawn from the city's account, local public funds to match the amount of the grant plus any loans from the Main Street Financial Incentive Fund on the basis of at least one local public dollar ($1.00) for every one dollar ($1.00) from the Main Street Financial Incentive Fund. This match requirement applies only to those moneys received for public improvements or public infrastructure and is in addition to the requirement set forth in subdivision (1) of this subsection.

(3) A city that fails to satisfy the condition set forth in subdivision (1) of this subsection shall lose any moneys that have not been used within three years of being selected. These unused moneys shall be credited to the Main Street Financial Incentive Fund. A city that fails to satisfy the conditions set forth in subdivisions (1) and (2) of this subsection may file a new application.

(4) Any moneys repaid or credited to the Main Street Financial Incentive Fund pursuant to subdivision (3) of this subsection shall be available to other applicants as long as the Main Street Financial Incentive Fund is in effect.

(i) Each city is authorized to agree to apply any available revenues of that city to the repayment of a loan obligation to the extent the generation of these revenues is within the power of that city to enter into covenants to take action in order to generate these revenues; provided:

(1) The agreement to use this source of funds to make repayment or the covenant to generate these revenues does not constitute a pledge of the city's taxing power; and

(2) The repayment agreement specifically identifies the source of funds to be pledged.

(j) After a project financed in whole or in part pursuant to this act has been completed, the city shall report the actual cost of the project to the Department of Natural Resources and Community Development. If the actual cost of the project exceeds the projected cost upon which the grant plus any loans were based, the city may submit an application to the Department of Natural Resources and Community Development for a grant or loans for the difference. If the actual cost of the project is less than the projected cost, the city shall arrange to pay the difference to the Main Street Financial Incentive Fund according to terms set by the Department.

(k) Inspection of a project for which a grant plus any loans have been awarded may be performed by personnel of the Department of Natural Resources and Community Development. No person may be approved to perform inspections who is an officer or employee of the unit of local government to which the grant plus any loans were made or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of any project for which the grant plus any loans were made.

(l) The Department of Natural Resources and Community Development may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this act and regulations interpreting and applying the provisions of this act, as provided in the Administrative Procedure Act.

(m) The Department of Natural Resources and Community Development and cities that have been selected to receive a grant plus any loans from the Main Street Financial Incentive Fund shall prepare and file on or before July 31 of each year with the Joint Legislative Commission on Governmental Operations a consolidated report for the preceding fiscal year concerning the allocation of grants plus any loans authorized by this act.

The portion of the annual report prepared by the Department of Natural Resources and Community Development shall set forth for the preceding fiscal year itemized and total allocations from the Main Street Financial Incentive Fund for grants and loans. The Department of Natural Resources and Community Development shall also prepare a summary report of all allocations made from the fund for each fiscal year; the total funds received and allocations made; the total amount of loan moneys repaid to the Fund, and the total unallocated funds in the Fund.

The portion of the report prepared by the city shall include:

(1) The total amount of private funds that were committed and the amount that were invested in the designated downtown area during the preceding fiscal year;

(2) The total amount of local public matching funds that were raised, if required by subdivision (h)(2) of this section;

(3) The total amount of grant plus any loans received from the Main Street Financial Incentive Fund during the preceding fiscal year;

(4) The total amount of loan moneys repaid to the Main Street Financial Incentive Fund during the preceding fiscal year;

(5) A description of how the grant and loan moneys and funds from private investors were used during the preceding fiscal year;

(6) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

Requested by: Senator Royall

-----HIGHWAY FUNDS/ADJUSTMENT TO REFLECT ACTUAL REVENUE

Sec. 41. Section 52 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989, reads as rewritten:

"Sec. 52. Any unreserved credit balance in the Highway Fund on June 30 of each of the fiscal years shall support appropriations in the

succeeding fiscal year. If all of the balance is not needed for these appropriations, the Director of the Budget may use the remaining excess to establish a reserve for access and public roads, a reserve for purchase of rights-of-way, a reserve for unforeseen happening of a state of affairs requiring prompt action as provided in G.S. 136-44.1, and other required reserves. Actual revenue in excess of estimated revenue shall be placed in the reserve for highway construction and maintenance. If all the remaining excess is not used to establish these reserves, the remainder shall be allocated to the State-funded maintenance or construction appropriations in the manner approved by the Board of Transportation. The Board of Transportation shall report monthly to the Joint Legislative Commission on Governmental Operations about the use of the reserve for highway construction and maintenance. The Board of Transportation shall send copies of the monthly reports to the Chairman of the Senate Appropriations Committee on Natural and Economic Resources, the Chairman of the Highway Fund Subcommittee of the Appropriations Committee of the House of Representatives, the Chairman of the Senate Transportation Committee, and the Chairman of the Highways Subcommittee of the Infrastructure Committee of the House of Representatives."

Requested by: Senator Marvin

-----USE OF DRUG ENFORCEMENT RECEIPTS

Sec. 42. The Department of Crime Control and Public Safety shall use the $258,200 of drug law enforcement receipts in its budget for the 1989-90 fiscal year for operating expenses related to drug law enforcement activities of the Highway Patrol and for other one-time equipment purchases. The Department of Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations on its intended use of these funds in compliance with Section 63 of Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989.

Requested by: Senator Marvin

-----UNDERGROUND STORAGE TANK FUNDS

Sec. 43. Of the funds appropriated in Section 6 of this act to the Department of Crime Control and Public Safety, the sum of $212,350 for the 1989-90 fiscal year shall be used to begin the upgrading and replacement of underground gasoline storage tanks to meet the standards required by the Environmental Protection Act. The Department of Crime Control and Public Safety, Division of Highway Patrol, shall report to the Senate Appropriations Committee on Justice and Public Safety and to the Fiscal Research Division by April 15, 1990, on additional costs needed to meet the standards

required by the Environmental Protection Act and on receipts that are available to the Highway Patrol Division to offset these costs.

Requested by: Senator Martin of Pitt
-----ZOOLOGICAL PARK FUNDS

Sec. 44. Of the funds appropriated to the Department of Natural Resources and Community Development in Section 4 of this act, $4,250,000 for the 1989-90 fiscal year shall be used for the North Carolina Zoological Park, provided that the North Carolina Zoological Park Society raises $1,062,500 for the 1989-90 fiscal year to match this appropriation on a basis of four State dollars for every one non-State dollar. The Society shall periodically inform the Department of the amount of matching funds it has raised. The Department may expend the funds allocated by this section only to the extent that the required matching funds have been raised. The funds allocated by this section shall not revert at the end of the fiscal year, but shall remain available to the Department for the purpose stated in this section.

Requested by: Senator Barker
-----A.A. CUNNINGHAM AIR MUSEUM FUNDS

Sec. 45. Of the funds appropriated to the Office of State Budget and Management for fiscal year 1989-90, $500,000 shall be made available to the A. A. Cunningham Air Museum Foundation, Inc., for capital improvements to the marine and aviation museum. These public funds shall be matched on a three-to-one, private-to-public basis.

Requested by: Senator Royall
-----EXECUTIVE MANSION FUNDS

Sec. 46. (a) Of the funds appropriated in Section 8 of this act to the Office of State Budget and Management for fiscal year 1989-90, $1,000,000 shall be made available to the Executive Mansion Fund, Inc., provided an equal amount of non-State funds is raised by that corporation for the Executive Mansion.

(b) State funds made available by subsection (a) of this section may be used only as follows:

(1) For the Fine Arts Reserve Fund, to be used for acquisitions, restoration, and operations but not for staff support; and

(2) For immediate needs for restoration and acquisitions for the first floor public areas of the Mansion.

(c) State funds may only be released to the Executive Mansion Fund, Inc., upon receipt of actual cash, stock, securities and other items valued in a manner consistent with federal and State law and

regulations regarding deductions for charitable donations; and legally binding pledges of support from corporations, foundations, and private individuals.

(d) No State funds may be used in support of fund-raising costs, the centennial book, or to fund staff support of the Executive Mansion Fine Arts Committee or the Executive Mansion Fund, Inc.

Requested by: Representative B. Ethridge
-----COMMUNITY ACTION FUNDS

Sec. 47. The funds appropriated for the 1989-90 fiscal year in Section 9 of this act to the Department of Natural Resources and Community Development, Division of Community Assistance, for Community Action Programs shall be allocated as follows:

(1) The sum of $125,000 shall be used for Head Start programs and services for children who are eligible for these programs and services, but who are not receiving them due to lack of funding; and

(2) The sum of $125,000 shall be used to expand existing services to the elderly, needy, and handicapped.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine
-----CIVIL WORKS PROJECTS

Sec. 48. (a) Of the funds appropriated to the Department of Natural Resources and Community Development in Section 5 of this act, the sum of $2,200,000 in the 1989-90 fiscal year shall be used for civil works projects. The Department of Natural Resources and Community Development shall fund the following projects, whose estimated costs are as indicated:

(1) Wilmington Harbor Maintenance Dredging	$225,000
(2) Northeast Cape Fear River Navigation Improvement	201,000
(3) Wanchese Channel Maintenance Dredging	231,000
(4) Wilmington Harbor Passing Lane Study	173,000
(5) Wrightsville Beach Protection	353,000
(6) Aquatic Weed Control	40,000
(7) State Local Water Resources Development Project Grants	499,000
(8) Cape Lookout Ferry Channel Maintenance	175,000

(9) Corps of Engineers Feasibility Studies	50,000
(10) Wilmington Harbor Turns and Bends Study	150,000
(11) Wilmington Harbor Turning Basin Study	90,000
(12) Neuse River (Oriental) Bank Protection	13,000.

(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If the Army Corps of Engineers projects are delayed and if the Army Corps of Engineers is unable to use State cost share funds available for the 1989-90 fiscal year, the Department may fund, to the extent that funds are available, those projects of the Army Corps of Engineers that have advanced in schedule. Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 1990-91 fiscal year.

(c) Beginning October 1, 1989, the Department of Natural Resources and Community Development shall make quarterly reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Director of the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include:

(1) All projects listed in subsection (a) of this section;
(2) The estimated cost of each project;
(3) The date work on each project began or is expected to begin;
(4) The date work on each project was completed or is expected to be completed; and
(5) The actual cost of each project.

The quarterly reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

Requested by: Representative B. Ethridge

-----N.C. RURAL WATER ASSOCIATION REPORT

Sec. 49. (a) Beginning October 1, 1989, the North Carolina Rural Water Association, Inc., shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations on the activities of the North Carolina Rural Water Association, Inc., and the assistance it has provided to communities. These reports shall include:

(1) Information of the activities and accomplishments during the current fiscal year;
(2) Itemized expenditures during the current fiscal year;

(3) Sources of funding and any fees charged for the current fiscal year and for the following fiscal year;
(4) Planned activities for the following fiscal year and, if available, for future fiscal years; and
(5) Projected expenditures for the following fiscal year and, if available, for future fiscal years.

(b) The North Carolina Rural Water Association, Inc., shall submit a copy of its annual report to the State Auditor.

Requested by: Senators Martin of Pitt, Hunt of Durham, Representatives Easterling, Michaux

-----CENTER FOR COMMUNITY SELF-HELP FUNDS

Sec. 50. (a) Of the funds appropriated in Section 9 of this act to the Office of State Budget and Management to the Center for Community Self-Help, $2,000,000 for the 1989-90 fiscal year shall be used for the purpose of furthering a revolving loan program of lending, to be leveraged at a 24 to 1 ratio with other funds, for home ownership for low and moderate income families in North Carolina. Loans made under the program shall be conditioned on the unavailability of mortgage loans for the same purposes from private lenders upon reasonably equivalent terms and conditions. Payments of principal shall be available for further loans.

(b) The Center for Community Self-Help shall submit, within 180 days after the close of its fiscal year, audited financial statements to the State Controller. All records pertaining to the use of State funds shall be made available to the State Auditor upon request. The Center for Community Self-Help shall make quarterly reports on the use of State funds to the State Controller, in form and format prescribed by the State Controller or his designee. The Center for Community Self-Help shall make a written report by May 1 of each year for the next three years to the General Assembly on the use of the funds allocated by this section.

(c) The Center for Community Self-Help shall report to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Committees on Natural and Economic Resources, and the Department of Commerce on a quarterly basis for the life of the revolving fund as to the status of the home ownership lending program. The report shall include: the amount of total monies available; the amount of total monies loaned; the total number of homes financed; and the income of the borrowers.

(d) The Office of State Auditor may conduct an annual end-of-year audit of the revolving fund for home ownership lending of the Center for Community Self-Help for each year of the life of the revolving fund.

(e) If the Center for Community Self-Help dissolves, the corporation shall transfer the remaining assets of the revolving fund to the State and shall refrain from disposing of the revolving fund assets without the approval of the State Treasurer.

(f) The Office of State Budget and Management shall disburse the funds described in subsection (a) of this section in $1,000,000 increments upon presentation by the Center for Community Self-Help of letters documenting the willingness of institutions to make matching loan capital available for this program on a 24 to 1 basis for each $1,000,000 disbursement increment. The Office of State Budget and Management shall disburse the funds within 10 working days of the receipt of such letters.

Requested by: Senator Martin of Pitt, Representatives B. Ethridge, Redwine

-----UTILITY COMMISSION STAFF POSITIONS

Sec. 51. There is appropriated from the fees collected pursuant to G.S. 62-300, to the North Carolina Utilities Commission the sum of $157,486 for the 1989-90 fiscal year and the sum of $157,486 for the 1990-91 fiscal year to establish and support two Grade 80 Public Utilities Engineer III positions to assist in the Commission's statutory responsibilities in the regulation of the regulated electric and natural gas industries in North Carolina.

Requested by: Representatives B. Ethridge, Redwine

-----PIEDMONT TRIAD AIRPORT AUTHORITY FUND

Sec. 52. The funds appropriated to the Office of State Budget and Management in Section 9 of this act to support utility costs for the location of the Piedmont Triad Airport Authority's maintenance and training facility that are unexpended and unencumbered shall revert to the General Fund on June 30, 1991, in the event this project is not completed.

Requested by: Representative Redwine

-----N.C. HOUSING PARTNERSHIP

Sec. 53. G.S. 122E-4 is amended by adding a new subsection to read:

"(i) Members of the Partnership may not receive any direct benefit from, or participate in, the programs of the Fund. Members of the Partnership may be employed by, or serve as a board member of, a nonprofit entity participating in a program of the Fund if the member discloses the employment or the membership in the minutes of the Partnership and does not vote on any matter pertaining to the entity's participation. This policy applies to:

(1) Individual members of the Partnership;
(2) Businesses, corporations, or partnerships owned in whole or in part by members of the Partnership; and
(3) The immediate family members of the members of the Partnership."

Requested by: Representatives B. Ethridge, Redwine
-----INDUSTRIAL DEVELOPMENT FUND

Sec. 54. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding at the end a new section to read:
"*§ 143B-437A. Industrial Development Fund.*

(a) There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically depressed counties in the State in creating jobs. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following:

(1) The funds shall be used for (i) installation of or purchases of manufacturing equipment or process productions equipment, (ii) structural repairs, improvements, or renovations of existing buildings to be used for manufacturing and industrial expansion, (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing industrial buildings to be used for manufacturing and industrial operations, or (iv) in the case of counties designated as severely distressed counties under G.S. 105-130.40(c) or G.S. 105-151.17(c) or units of local government within those counties, construction of or improvement to new or existing water, sewer, gas, or electrical utility distribution lines or equipment to serve new or proposed industrial buildings to be used for manufacturing and industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific manufacturing activity. However, the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county which is documented to be experiencing a major economic dislocation.
(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a rate of one thousand

two hundred dollars ($1,200) per new job created up to a maximum of two hundred fifty thousand dollars ($250,000) per project.

(b) Each year, on or before December 31, the Secretary of Commerce shall designate the most economically distressed counties in the State; this designation shall remain effective for the following calendar year. The Secretary of Commerce shall determine which counties are the most economically distressed counties in the State based on (i) rate of unemployment, (ii) per capita income, and (iii) relative population and work force growth or lack of growth, as determined by the Secretary of Commerce.

(c) The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) As used in this section, 'major economic dislocation' means the actual or imminent loss of:

(1) 500 or more manufacturing jobs in the county; or

(2) A number of manufacturing jobs which is equal to or more than ten percent (10%) of the existing manufacturing workforce in the county."

Requested by: Senator Royall, Representatives Holmes, G. Wilson

-----RESERVE FOR ADVANCE PLANNING

Sec. 55. The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on how it intends to spend funds from the Reserve for Advance Planning at least 45 days before it spends the funds.

The Office of State Budget and Management shall also report the results of any project on which it uses funds from the Reserve for Advance Planning to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

Requested by: Senator Royall, Representatives Holmes, G. Wilson

-----ENCUMBERED APPROPRIATIONS AND PROJECT RESERVE FUND

Sec. 56. When each capital improvement project appropriated by the 1989 General Assembly, other than those projects under the Board of Governors of The University of North Carolina, is placed

under construction contract, direct appropriations shall be encumbered to include all costs for construction, design, investigation, administration, movable equipment, and a reasonable contingency. Unencumbered direct appropriations remaining in the project budget shall be placed in a project reserve fund credited to the Office of State Budget and Management. Funds in the project reserve may be used for emergency repair and renovation projects at State facilities with the approval of the Director of the Budget. The project reserve fund may be used, at the discretion of the Director of the Budget, to allow for award of contracts where bids exceed appropriated funds, if those projects supplemented were designed within the scope intended by the applicable appropriation or any authorized change in it, and if, in the opinion of the Director of the Budget, all means to award contracts within the appropriation were reasonably attempted. At the discretion of the Director of the Budget, any balances in the project reserve fund shall revert to the original source.

Requested by: Senator Royall, Representatives Holmes, G. Wilson
-----PROJECT COST INCREASE

Sec. 57. Upon the request of the administration of a State department or institution, the Director of the Budget may, when in his opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, he shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution.

Requested by: Senator Royall, Representatives Holmes, G. Wilson
-----NEW PROJECT AUTHORIZATION

Sec. 58. Upon the request of the administration of any State department or institution, the Governor may authorize the construction of a capital improvement project not specifically authorized by the General Assembly if such project is to be funded by gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, or self-liquidating indebtedness. Provided, however, that if the Director of the Budget authorizes the construction of such a capital improvement project, he shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Requested by: Senator Royall, Representatives Holmes, G. Wilson
-----ADVANCE PLANNING OF CAPITAL IMPROVEMENT PROJECTS

Sec. 59. Funds which become available by gifts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, federal or private grants, receipts becoming a part of special funds by act of the General Assembly or any other funds available to a State department or institution may be utilized for advance planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget. The Director of the Budget may make allocations from the Advance Planning Fund for advance planning through the working drawing phase of capital improvement projects, except that this revolving fund may not be utilized by the Board of Governors of The University of North Carolina or the State Board of Community Colleges.

Requested by: Senator Royall, Representatives Holmes, G. Wilson
-----APPROPRIATIONS LIMITS/REVERSION OR LAPSE

Sec. 60. Except as permitted in previous sections of this act, the appropriations for capital improvements made by the 1989 General Assembly may be expended only for specific projects set out by the 1989 General Assembly and for no other purpose. Construction of all capital improvement projects enumerated by the 1989 General Assembly shall be commenced, or self-liquidating indebtedness with respect to them shall be incurred, within 12 months following the first day of the fiscal year in which the funds are available. If construction contracts on those projects have not been awarded or self-liquidating indebtedness has not been incurred within that period, the direct appropriation for those projects shall revert to the original source, and the self-liquidating appropriation shall lapse; except that direct appropriations may be placed in a reserve fund as authorized in this act. This deadline with respect to both direct and self-liquidating appropriations may be extended up to an additional 12 months if circumstances and conditions warrant such extension.

Requested by: Senator Royall, Representatives B. Ethridge, Redwine
-----CLEAN WATER AND SEWER PROGRAM

Sec. 61. Funds appropriated in Section 5 of this act to the Office of State Budget and Management for the North Carolina Clean Water Revolving Loan and Grant Program shall be allocated under the provisions of Chapter 159G of the General Statutes, the North Carolina Clean Water Revolving Loan and Grant Act of 1987.

Requested by: Representative Woodard

-----ASSISTANCE TO SMALL WATER SYSTEMS

Sec. 62. Of the funds appropriated to the Office of State Budget and Management for the 1989-90 fiscal year for the Clean Water and Sewer Program in Section 5 of this act, the sum of $100,000 shall be allocated to the North Carolina Rural Water Association, Inc., as a grant-in-aid for operating expenses incurred for providing training and technical assistance to small water systems throughout the State.

Requested by: Senator Royall, Representatives Holmes, G. Wilson

-----EFFECT OF HEADINGS

Sec. 63. The headings to the sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Senator Royall, Representatives Holmes, G. Wilson

-----COMMITTEE REPORT

Sec. 64. The Joint Conference Report on Proposed Conference Committee Substitute for Senate Bill 1042, dated August 7, 1989, which was distributed to the Senate and the House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G. S. 143-15 of the Executive Budget Act, and for such purposes shall be considered a part of this act.

Requested by: Senator Royall, Representatives Holmes, G. Wilson

-----EFFECTIVE DATE

Sec. 65. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 10th day of August, 1989.

H.B. 1175 **CHAPTER 755**

AN ACT TO ESTABLISH AND FUND A PROGRAM OF MOTORCYCLE SAFETY INSTRUCTION AND TO PROVIDE THAT A DISCOUNT INSURANCE RATE MAY BE MADE AVAILABLE FOR CERTIFIED GRADUATES OF THE PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115D of the General Statutes is amended by adding a new Article to read:

"ARTICLE 6A.

"Motorcycle Safety Instruction.

"*§ 115D-72. Motorcycle Safety Instruction Program.*

(a) There is created a Motorcycle Safety Instruction Program for the purpose of establishing statewide motorcycle safety instruction to be delivered through the Department of Community Colleges. The Program may be administered by a motorcycle safety coordinator who shall be responsible for the planning, curriculum, and completion requirements of the Program. The State Board of Community Colleges may elect a motorcycle safety coordinator upon nomination of the President of the Community College System, and the compensation of the motorcycle safety coordinator shall be fixed by the State Board upon recommendation of the President of the Community College System pursuant to G.S. 115D-3. The State Board of Community Colleges may contract with an appropriate public or private agency or person to carry out the duties of the motorcycle safety coordinator.

(b) The Motorcycle Safety Instruction Program shall be implemented through the Department of Community Colleges at institutions which choose to provide the Program. The motorcycle safety coordinator shall select and facilitate the training and certification of instructors who will implement the Program."

Sec. 2. G.S. 20-87(6) reads as rewritten:

"(6) Private Motorcycles. -- The base tax on private passenger motorcycles shall be nine dollars ($9.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base tax shall be sixteen dollars ($16.00). A tax of three dollars ($3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base tax. The revenue from the additional tax shall be deposited in the General Fund."

Sec. 3. G.S. 58-124.31 is amended by adding a new subsection to read:

"(m) Notwithstanding any other provision of law, with respect to motorcycle insurance under the jurisdiction of the Bureau, any member of the Bureau may apply for and use in this State, subject to the Commissioner's approval, a downward deviation in the rates of insureds who show proof of satisfactory completion of the Motorcycle Safety Instruction Program."

Sec. 4. This act shall become effective October 1, 1989, and shall expire October 1, 1993.

In the General Assembly read three times and ratified this the 10th day of August, 1989.

S.B. 115 **CHAPTER 756**

AN ACT CREATING THE NORTH CAROLINA SOLID WASTE MANAGEMENT CAPITAL PROJECTS FINANCING AGENCY,

AUTHORIZING THE ISSUANCE OF AGENCY REVENUE BONDS TO MAKE LOANS TO UNITS OF LOCAL GOVERNMENT FOR SOLID WASTE MANAGEMENT PROJECTS, AUTHORIZING UNITS OF LOCAL GOVERNMENT TO ISSUE SPECIAL OBLIGATION BONDS FOR SOLID WASTE MANAGEMENT PROJECTS, AND AMENDING CERTAIN GENERAL LAWS.

Whereas, the 1987 Session of the General Assembly authorized the Legislative Research Commission to study the subject of solid waste management in North Carolina; and

Whereas, the Legislative Research Commission, through its Solid Waste Management Study Committee, has determined that the State of North Carolina confronts a crisis in solid waste management in the immediate future, in that 13 counties will run out of landfill space within two years and one-third of all landfills in the State will have reached their capacity within five years; and

Whereas, many units of local government do not have the resources to implement alternative methods of solid waste management or to meet increasingly stricter standards applicable to landfills; and

Whereas, the pooling of the financing needs of several units of local government and the issuance of bonds by an instrumentality of the State to finance the cost of solid waste management projects will reduce the costs of such financing and will increase the number of financing options available by, among other things, providing access to a broader bond market than would otherwise be available to units of local government with intermittent financing needs, by reducing issuance and marketing expenses and by providing such units with the opportunity to obtain credit and liquidity enhancement facilities that might otherwise be unavailable or more costly, thus reducing interest costs to such units; and

Whereas, improved solid waste management practices are necessary to preserve the quality of North Carolina's groundwater and to insure that North Carolina remains competitive with other states in economic development; and

Whereas, the Legislative Research Commission and its Solid Waste Management Study Committee has determined that it would serve the interests of the State to establish a loan fund to provide loans to those units of local government that are trying to address their solid waste problems; and

Whereas, the North Carolina Commission on Jobs and Economic Growth is charged to identify the major economic concerns facing this State and to recommend solutions; and

Whereas, on March 29, 1988, the North Carolina Commission on Jobs and Economic Growth adopted a recommendation that a solid waste management revolving loan fund be established; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. A new Chapter is added to the General Statutes to read:

"Chapter 159I

"North Carolina Solid Waste Management Loan Program.

"§ 159I-1. *Short title.*

This Chapter may be cited as the North Carolina Solid Waste Management Loan Program.

"§ 159I-2. *Findings and purpose.*

The General Assembly finds that units of local government need a source of funds to implement solid waste management programs. Units of local government will confront a crisis in solid waste management in the near future. Within five years of the creation of this program, one-third of all the landfills in this State will have reached their capacity. Many local governments do not have the funds to meet:

(1) The increased costs of constructing new landfills that meet current standards for the protection of the environment; or

(2) The cost of constructing a local or regional incinerator that would serve to reduce the volume of waste to be landfilled; or

(3) The costs of implementing alternative programs to reduce the amount of waste generated, to decrease the volume of waste that is generated, or to recover or to recycle that part of the waste stream that can be recovered or used for another purpose.

The General Assembly finds that comprehensive solid waste management programs at a local or regional level are needed in order to preserve the quality of North Carolina's groundwater. It is the purpose of the General Assembly to facilitate the implementation of local and regional solid waste management programs by establishing a loan fund for financing the capital expenses of these programs. The General Assembly seeks to encourage and assist units of local government to continue to voluntarily provide solid waste collection and disposal for their citizens, thereby maintaining a clean and healthful environment and an adequate supply of clean water.

"§ 159I-3. *Definitions.*

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Chapter:

(1) 'Administrative charges' means any charge made by the Agency to a unit of local government for the providing of financing pursuant to this Chapter and may include, without limitation, charges for financing costs, charges for the costs of bond and reserve fund insurance, of credit-enhancement and liquidity facilities, and of interest-rate agreements, charges in respect of nonasset bond and investment income deficiencies, and charges for administrative expenses of the Agency incurred in the exercise of its powers and duties conferred by this Chapter.

(2) 'Agency' means the North Carolina Solid Waste Management Capital Projects Financing Agency.

(3) 'Board' means the board of directors of the Agency or any other governing body of the Agency succeeding to the principal functions of the Agency.

(4) 'Bonds' means the revenue bonds authorized to be issued by the Agency under this Chapter. As used in this Chapter, the term 'bonds' does not include any loan agreement.

(5) 'Costs' means the capital cost of acquiring or constructing any project, including, without limitation, the following:

a. The costs of doing any or all of the following deemed necessary or convenient by a unit of local government:
   1. Acquiring, constructing, erecting, providing, developing, installing, furnishing, and equipping;
   2. Reconstructing, remodeling, altering, renovating, replacing, refurnishing, and re-equipping;
   3. Enlarging, expanding, and extending; and
   4. Demolishing, relocating, improving, grading, draining, landscaping, paving, widening, and resurfacing.

b. The costs of all property, both real and personal and both improved and unimproved, and of plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, air rights, franchises, and licenses used or useful in connection with the purpose authorized;

c. The costs of demolishing or moving structures from land acquired and acquiring any lands to which such structures thereafter are to be moved;

d. Financing charges, including estimated interest during the acquisition or construction of such project and for six months thereafter;

e. The costs of services to provide and the cost of plans, specifications, studies and reports, surveys, and estimates of costs and revenues;

f. The costs of paying any interim financing, including principal, interest, and premium, related to the acquisition or construction of a project;

g. Administrative and legal expenses and administrative charges;

h. The costs of obtaining bond and reserve fund insurance and investment contracts, of credit-enhancement facilities, liquidity facilities and interest-rate agreements, and of establishing and maintaining debt service and other reserves; and

i. Any other services, costs, and expenses necessary or incidental to the purpose authorized.

(6) 'Division' means the Division of Health Services of the Department of Environment, Health, and Natural Resources and any successor of said Division.

(7) 'Loan' means moneys loaned by the Agency to a unit of local government for a project authorized by this Chapter.

(8) 'Loan agreement' means any bond, note, contract, loan agreement, or other written agreement of a unit of local government delivered to the Agency and evidencing the unit's receipt of loan proceeds from the sale of all or a portion of the Agency's bonds or from other available money of the Agency and setting forth the terms of the unit's agreement to make payments to the Agency in respect of such loan.

(9) 'Local Government Commission' means the Local Government Commission of the Department of the State Treasurer, established by Article 2 of Chapter 159 of the General Statutes and any successor of said Commission.

(10) 'Notes' means the revenue notes or revenue bond anticipation notes authorized to be issued by the Agency under this Chapter. As used in this Chapter, the term 'notes' does not include any loan agreement.

(11) 'Project' means any capital project authorized to be financed in G.S. 159I-8.

(12) 'Revenues' means all moneys received by the Agency, other than the proceeds received by the Agency from the sale of bonds or notes and moneys appropriated by the State for the Solid Waste Management Loan Fund, in connection with the providing of financing to units of local government, including without limitation:

a. The payments received by the Agency of the principal of and premium, if any, and interest on loan agreements;

b. Administrative charges, but only to the extent determined by the Agency; and

c. Investment earnings on all revenues, funds, and other moneys of the Agency.

(13) 'Unit of local government' or 'unit' means:

a. A unit of local government as defined in G.S. 159-44(4);

b. Any combination of units, as defined in G.S. 160A-460(2), entering into a contract or agreement with each other under G.S. 160A-461; or

c. Any joint agency established under G.S. 160A-462; as any such section may be amended from time to time.

(b) Unless a different meaning is required by the context, the definitions set out in G.S. 130A-290, as such section may be amended from time to time, shall apply throughout this Chapter.

"*§ 159I-4. Creation of Agency.*

(a) A body politic and corporate to be known as the 'North Carolina Solid Waste Management Capital Projects Financing Agency' is created. This Agency shall be a public agency and an instrumentality of the State for the performance of essential governmental and public functions.

(b) The Board of Directors of this Agency shall be its governing board, which shall consist of five members. One of the members of the Board shall be the State Treasurer who shall serve ex officio. The State Treasurer shall be Chairman of the Board of Directors. Two members shall be appointed by the Governor, one member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121. The appointments to be made initially by the Governor shall be for terms beginning on the dates of their respective appointments and expiring on June 30, 1990, and June 30, 1992. The appointments to be made initially by the General Assembly as recommended by the Speaker of the House of Representatives and by the General Assembly as recommended by the President Pro Tempore of the Senate shall be for terms beginning on the date of their respective appointments and expiring on June 30, 1991. Appointments made to succeed the initial appointments shall be for two-year terms commencing, respectively, on July 1, 1990, July 1,

1991, and July 1, 1992, and subsequent appointments shall be for two-year terms.

(c) All members of the Board shall remain in office until their successors are appointed and qualify. Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

(d) Any member of the Board may be removed from office for misfeasance, malfeasance, nonfeasance, or improper influence in accordance with the provisions of G.S. 143B-13 and the resulting vacancy shall be filled as provided herein for vacancies in general.

(e) The Board of Directors shall adopt bylaws with respect to the call of meetings, quorums, voting procedures, the keeping of records, and such other organizational and administrative matters as the Board of Directors may determine. A quorum shall consist of no less than three members of the Board.

(f) No vacancy in the membership of the Board of Directors shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board of Directors and the Agency.

(g) No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the Board of Directors shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

(h) The Agency shall be contained within the Department of State Treasurer as if it had been transferred to that Department by a Type II transfer as defined in G.S. 143A-6(b).

"*§ 159I-5. General powers of the Agency.*

The Agency shall have all of the powers necessary or convenient to carry out and to effect the purposes and provisions of this Chapter, including, without limitation, the powers:

(1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Chapter, including, without limitation, agreements in respect of loan agreements and agreements with issuers of credit-enhancement facilities, liquidity facilities, bond insurance policies, reserve fund insurance policies and investment contracts, and interest-rate agreements;

(2) To contract with any unit of local government with respect to any of the matters covered by this Chapter;

(3) To establish a debt service reserve fund or funds, from moneys in the Solid Waste Management Loan Fund or

from other available moneys, and other reserve funds and to borrow money to purchase insurance and investment contracts to establish, maintain, or increase such funds;

(4) To agree to apply and assign any money, loan agreements, and other revenues;

(5) To borrow money as herein provided to carry out and effect its corporate purposes and to issue in evidence thereof bonds, notes, or bond anticipation notes for the purpose of providing funds therefor, including funds for the financing and refinancing of the cost of the acquisition or construction of projects, including the payment or advance on behalf of units of local government of the costs of such projects;

(6) To apply any payments, or prepayments, or principal of or interest on any loan agreement, to the extent such payment or prepayment is not necessary to pay debt service on the Agency's bonds or notes, to the financing of the cost of the acquisition or construction of projects for units of local government to the same extent as provided in G.S. 159I-6;

(7) To fix, revise, charge and collect, or cause to be fixed, revised, charged, and collected, and to apportion administrative charges among units of local government participating in any program of the Agency;

(8) To employ an administrator to administer the operations of the Agency, fiscal and financial consultants, underwriters, attorneys, trustees, remarketing agents, and such other consultants, agents, and employees as may be required in the judgment of the Agency and to fix and pay their compensation from funds available to the Agency;

(9) To apply for, accept, receive and agree to, and to comply with the terms and conditions governing grants, loans, advances, contributions, gifts, and other aid from any source whatsoever, including federal and State sources;

(10) To sue and be sued in its own name, to plead and be impleaded;

(11) To adopt an official seal and to alter the same at its pleasure;

(12) To establish and revise from time to time minimum financial standards and criteria for determining the eligibility of specific units of local government to obtain financing and to make loans as provided in this Chapter;

(13) To deposit, disburse, and invest, pursuant to the provisions of this Chapter, the proceeds of any fund established in accordance with this Chapter and to determine the

application of the proceeds of any earnings thereon, subject to the specific provisions of this Chapter; and

(14) To act as otherwise necessary or convenient to carry out the purposes of this Chapter.

"§ 159I-6. *Specific powers of the Agency.*

(a) The Agency shall have the discretion to enter into one or more loan agreements with a unit of local government, providing for the making of a loan by the Agency to the unit of local government, to finance or refinance the cost of the acquisition or construction of a project; and

(b) Any loan agreement entered into by the Agency with a unit of local government shall be in writing and shall set forth the terms and conditions agreed to between the Agency and the unit of local government for the Agency's loan to such unit of local government including, without limitation, the following:

(1) The term of such loan agreement;

(2) The payment provisions and prepayment provisions, if any, required:

a. To enable the Agency to administer its programs;

b. To pay when due the principal of and premium, if any, and interest on bonds or notes or other obligations of the Agency incurred to make such loan; and

c. To pay or reimburse the Agency for such unit's administration charges and the cost of establishing and maintaining any reserves;

(3) The security for payment by the unit of local government of the loan; and

(4) Such other provisions and covenants as the Board may require.

(c) Nothing in this Chapter shall be deemed to change the application of the provisions of Article 8 of Chapter 143 of the General Statutes, relating to competitive bidding for public contracts, or the application of the provisions of Article 3 of Chapter 143 of the General Statutes specifically including the provisions of G.S. 143-49(6), as it applies to units of local government financing projects under this Chapter. To the extent that units comply with such competitive bidding requirements, there shall be no further requirements in respect of the Agency.

"§ 159I-7. *Solid Waste Management Loan Fund.*

(a) A Fund to be known as the Solid Waste Management Loan Fund is established. Moneys appropriated to, paid to, or earned by this Fund shall be deposited with the State Treasurer or a corporate trustee as provided for in G.S. 159I-16, as may be determined by the Board.

(b) Moneys in the Solid Waste Management Loan Fund may be invested in the same manner as permitted for investments of funds belonging to the State or held in the State treasury. Interest earnings derived from such investments shall be credited to the Fund, credited to such other use as may be provided in a trust agreement or resolution securing any bonds or notes issued under the provisions of this Chapter, or credited to such other use, including the payment of administrative expenses of the Agency, the costs of research for solid waste management programs and the making of grants for such research, as may be directed by the Board.

In connection with solid waste research to be contracted for by the Solid Waste Branch, the Secretary of the Department to which that Branch is assigned, statutorially, shall negotiate, with the Board of the Agency, a memorandum of agreement which shall contain necessary rules and provisions for certifying that proper competitive bid procedures, and when appropriate, proper sole source bid procedures, for contracts have been executed in connection with a Request for Proposals (RFP); and, which shall state that a previously determined one-to-one match requirement from private sector sources has been met in accordance with rules and provisions set out in the memorandum of agreement, and that the Secretary is ready to award a contract for a specified amount. The Treasurer, at the direction of the board, shall certify that funds are available and that the purpose of the contract is consistent with provisions for the use of solid waste loan program proceeds.

(c) Moneys in the Solid Waste Management Loan Fund may be used, as shall be determined by the Board, for any one or more of the following purposes:

(1) The establishment of one or more debt service reserve funds;

(2) The obtaining of one or more credit facilities as hereinafter defined in this Chapter;

(3) The making of loans to units of local government, which loans may be evidenced by debt instruments; and

(4) The subsidization of interest rates on loans to units of local government.

In addition, any investment income or profit on moneys in the Solid Waste Management Loan Fund or on any moneys transferred from the Fund to a debt service reserve fund may be used, as shall be determined by the Board, to pay administrative expenses of the Agency.

(d) As used in this section, 'debt instrument' means an instrument in the nature of a promissory note executed by a unit of local government to evidence a debt to the Agency in respect of a loan made

to the unit from the Solid Waste Management Loan Fund and obligation to repay the principal, plus interest, under stated terms.

"§ *159I-8. Eligible purpose.*

(a) Loans may be made by the Agency to finance the cost of acquisition or construction of projects. Projects shall include solid waste management projects and capital expenditures to implement such projects, including, without limitation, the purchase of equipment or facilities, construction costs of an incinerator; land to be used for recycling facilities; leachate collection and treatment systems; liners for landfills; monitoring wells; recycling equipment and facilities; volume reduction equipment; and financing charges.

(b) Projects may not include:

(1) The operational and maintenance costs of solid waste management facilities or programs;

(2) General planning or feasibility studies; or

(3) The purchase of land, unless the land is to be used for a recycling facility.

"§ *159I-9. Application.*

(a) All applications for loans shall be filed with the Division. The information required in the application shall be sufficient to permit the Division to determine the eligibility of the applicant pursuant to G.S. 159I-10 and to establish the priority of the application pursuant to G.S. 159I-11. An applicant shall furnish information in addition or supplemental to the information contained in its application upon written request.

(b) Applicants may apply for a loan prior to arranging for repayment.

"§ *159I-10. Eligible applicant.*

(a) In determining the eligibility of a unit of local government for financing a project with a loan from the Agency, the Agency may consider:

(1) The type and useful life of and the need for the project to be financed or refinanced;

(2) The amount of financing or the cost of the project sought;

(3) The credit rating, if any, of the unit of local government;

(4) The future financing and capital needs of the unit of local government;

(5) The availability and cost to the unit of local government of other methods of financing;

(6) The construction, disbursement, and management procedures in effect in the unit of local government; and

(7) Such other factors as the Agency may, in its discretion, determine to be relevant in the providing of such financing.

(b) As a condition of determining eligibility for participating in one or more financing programs, the Agency may establish:

(1) Procedures requiring compliance by units of local government with such construction, disbursement and accounting procedures, and programs as the Agency may determine;

(2) Minimum credit ratings or criteria;

(3) Minimum and maximum amounts with respect to the cost of the projects to be financed under this Chapter;

(4) Procedures that may be employed by the Agency in respect of units of local government that default in their obligations under loan agreements; and

(5) Such other procedures, conditions, and requirements as the Agency determines to be necessary or desirable in establishing its programs.

Nothing in this Chapter shall be deemed to restrict or limit the powers otherwise available to a unit of local government except to the extent restricted by the terms of any loan agreements or other agreements between a unit and the Agency, to obtain financing or refinancing for projects from a source other than the Agency or to establish or continue its own financing program or to enter into any other financing program.

(c) A unit of local government is not eligible to finance a project with a loan from the Agency unless the unit holds a public hearing on the issue of obtaining a loan from the Agency before it applies for the loan. The unit must publish notice of the hearing in a newspaper that is qualified for legal advertising in the unit at least ten days before the date fixed for the hearing.

"*§ 159I-11. Priority factors.*

(a) The Commission for Health Services shall adopt, pursuant to Chapter 150B of the General Statutes, rules for the assignment of a priority to each application for a loan under this Chapter.

(b) An application for a loan under this Chapter shall be assigned a priority by the Division. Factors to be taken into consideration in assigning such priorities shall include, but are not limited to, projects identified by the Division as addressing emergency solid waste management situations, current implementation by the unit of local government of a recycling program or a waste stream reduction program; financial need; multi-county solid waste management projects; groundwater protection needs; local effort; public health needs; and the proposed purpose of the applicant's loan is to implement a method of disposal that is an alternative to landfilling.

(c) A written statement of each priority assigned shall be prepared by the Division and shall be attached to the application. The priority assigned shall be conclusive.

(d) Any application that does not qualify for a loan for the period in which the application was eligible for consideration by reason of the priority assigned shall be considered for a loan during the next period upon written request of the applicant. If the second application should fail to qualify for a loan during the period for consideration by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new or amended application at any time.

"*§ 159I-12. Units of local government authorized to borrow money from the Agency by loans.*

(a) Any unit of local government determined by the Agency to be eligible pursuant to G.S. 159I-10 may borrow money from the Agency for the purpose of financing or refinancing the cost of the acquisition or construction of a project by a unit. The unit shall enter into a loan agreement with the Agency. The loan agreement shall set forth the terms and conditions of the loan, including the terms and conditions described in G.S. 159I-6(b), as determined and approved by the governing body of the unit.

(b) The obligation of a unit of local government under any loan agreement entered into with the Agency pursuant to this section shall be payable and otherwise secured as provided in G.S. 159I-13.

(c) In connection with entering into a loan obligation, any unit of local government may enter into a credit facility, as defined in G.S. 159I-13(g), and the obligation of a unit of local government under the credit facility to repay any drawing thereunder may be made payable and otherwise secured, to the extent applicable, as provided in G.S. 159I-13.

(d) The Agency or a unit of local government may propose an amendment, including an amendment restructuring or otherwise relating to the principal repayment schedule and the interest payment schedule set forth in such loan agreement, upon a determination by the Agency that such amendment is:

(1) Consistent with the then existing financial condition of the unit of local government and its ability to meet its agreement under the loan agreement; and

(2) Consistent with the then existing financial condition of the Agency and the administration of the Agency's duties and responsibilities under this Chapter.

Nothing in this Chapter shall be deemed as restricting the power of the Agency or the unit of local government to agree to any amendment to a loan agreement.

(e) No loan agreement or amendment to a loan agreement may become effective without the approval of the Local Government Commission. In determining whether a loan agreement or any amendment thereto should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86. The Local Government Commission shall approve any such loan agreement, or any amendment thereto, if, upon the information and evidence it receives, it finds and determines that such loan agreement, or amendment thereto, will satisfy its criteria and is consistent with the purposes of this Chapter. After considering a loan agreement or an amendment thereto, the Local Government Commission shall enter its order either approving or disapproving such agreement or amendment. An order of approval may not be regarded as an approval of the legality of such agreement or amendment. The order of the Local Government Commission disapproving such agreement or amendment is final.

"*§ 159I-13. Sources and security for units of local government.*

(a) The source or sources of and the security for payment of each loan agreement shall be determined by the governing body of such unit of local government and shall be set forth in the loan agreement.

(b) In the event that, under the provisions of The Local Government Bond Act a bond order authorizing the issuance of bonds that pledge the faith and credit of a unit of local government, that is otherwise authorized to issue bonds under the act, for the purpose of providing funds for one or more purposes that constitute eligible projects within the meaning of this Chapter has taken effect, then, in lieu of issuing any bonds authorized or any bond anticipation note in anticipation of such bonds, but not sold and delivered pursuant to such order, the governing body of any unit of local government may enter into a loan agreement authorized by this Chapter and may pledge the faith and credit of such unit to secure its obligation to make the payments required under such loan agreement or a credit facility in support of such loan agreement, provided the following conditions are met:

(1) The aggregate principal amount due under such loan agreement does not exceed the aggregate amount of authorized but unissued bonds, or any bond anticipation notes in anticipation of such bonds, under the bond order; and

(2) The project to be acquired is a purpose for which proceeds of bonds or bond anticipation notes may be expended under the bond order.

(c) Each unit of local government may agree to apply to the payment of a loan agreement any available source or sources of revenues of such unit and, to the extent the generation of such revenues is within the power of such unit, to enter into covenants to take action in order to generate such revenues, provided such agreement to use such sources to make payments or such covenant to generate revenues does not constitute a pledge of the unit's taxing power.

(d) Each unit of local government otherwise having the power of taxation may enter into loan agreements constituting a continuing contract and providing for the making of payments in ensuing fiscal years from any available source or sources of revenues, including the proceeds of taxes realized from the exercise of the unit's power of taxation, appropriated by the unit in its annual budget provided:

(1) The governing body of such unit shall have appropriated sufficient funds to pay any amount to be paid under the loan agreement in the fiscal year in which such contract is entered into, this appropriation to be made prior to the entering into of the loan agreement;

(2) There is included in the loan agreement a provision automatically cancelling the loan agreement in the event the governing body of the unit decides not to appropriate funds to make payment in an ensuing fiscal year in which event the obligation of the unit to make any future payments in any ensuing fiscal year shall cease;

(3) No deficiency judgment requiring the exercise of the unit's power of taxation may be entered against the unit in any action for breach of a contractual obligation authorized by this subsection; and

(4) The taxing power of the unit is not pledged to secure any payments to be made pursuant to the loan agreement and the Agency shall have agreed that it has no right to require the exercise of a unit's power of taxation to secure such loan agreement.

No loan agreement may contain a nonsubstitution clause which restricts the right of a unit to replace or provide a substitute for any project financed pursuant to the loan agreement.

(e) The obligation of a unit of local government with respect to the sources of revenues authorized by subsections (c) and (d) of this section shall be specifically identified in the proceedings of the governing body authorizing the unit to enter into a loan agreement. This loan agreement shall be valid and binding from the date the unit enters into the loan agreement. The sources of payment so specifically identified and then held or thereafter received by a unit,

any fiduciary, or the Agency shall immediately be subject to the lien of the loan agreement without any physical delivery of such sources or further act. This lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a unit without regard to whether such parties have notice thereof. The proceedings, the loan agreement, or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in the Chapter.

Any loan agreement secured by a source or sources of revenue authorized by subsection (b), (c) or (d) of this section may provide additional security by the granting of a security interest in the project financed to secure payment of the purchase money provided by the loan agreement, including a deed of trust on any real property so acquired.

(f) The interest payable by a unit to the Agency on any loan agreement may be at such rate or rates, including variable rates, as may be determined by the Local Government Commission with the approval of the governing body of such unit. Such approval may be given as the governing body of such unit may direct, including without limitation, a certificate signed by a representative of the unit designated by the governing body of such unit. The Agency may determine that it is necessary that certain provisions in the Agency's bonds or notes be reflected, in similar terms, in loan agreements, so that if it is necessary to vary the interest rate or call the principal prior to maturity of certain of the Agency's bonds or notes the Agency will have the power to effect a similar variation in interest rate or a similar call prior to maturity of certain loan agreements. Accordingly, in fixing the details of a loan agreement, the governing body of such unit may provide that a loan agreement be:

(1) Made payable from time to time on demand or tender for purchase by the Agency, provided a credit facility supports such a loan agreement. A credit facility is not required if the governing body of such unit specifically determines that a credit facility is not required upon a finding and determination by the governing body that the absence of a credit facility will not affect the unit's ability to make payments on demand or tender, and will not materially and adversely affect the financial position of the unit and the entering into of the loan agreement at a reasonable interest cost to the unit;

(2) Additionally supported by a credit facility;

(3) Made subject to redemption or a mandatory tender for purchase by the unit prior to maturity; and

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings of the governing body providing for the entering into of the loan agreement, including, without limitation, such variations as may be permitted pursuant to a par formula.

(g) As used in this section:

(1) 'Credit facility' means an agreement entered into by the unit of local government with a bank, savings and loan association, or other banking institution; an insurance company, reinsurance company, surety company or other insurance institution; a corporation, investment banking firm or other investment institution; or any financial institution providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment, or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any loan agreement payable on demand or tender by the Agency, in consideration of the unit agreeing to repay the provider of such credit facility in accordance with the terms and provisions of the agreement; the provider of any credit facility may be located either within or without the United States of America.

(2) 'Par formula' shall mean any provision or formula adopted by the unit to provide for the adjustment from time to time, of the interest rate or rates borne by any loan agreement, including:

a. A provision providing for such adjustment so that the purchase price of such loan agreement in the open market would be as close to par as possible.

b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time.

c. A provision providing for such adjustment based upon the adjustments of the interest rate or rates of the Agency's bonds and notes, or

d. Such other provision as the unit may determine to be consistent with this Chapter and will not affect the unit's ability to pay the principal of and the interest on any loan agreement, and will not materially and adversely affect the financial position of the unit and the entering into of the loan agreement at a reasonable interest cost to the unit.

(h) Any loan agreement may provide for an acceleration of the repayment schedule.

"§ 159I-14. *Credit of State not pledged.*

Bonds or notes issued by the Agency under the provisions of this Chapter shall not be secured by a pledge of the faith and credit of the State or of any political subdivision thereof or be deemed to create an indebtedness of the State, or of any such political subdivision thereof, requiring any voter approval, but shall be payable solely from Agency revenues and other funds provided therefor. Each bond or note issued by the Agency under this Chapter shall contain on its face a statement to the effect that the Agency shall not be obligated to pay the same, the interest, or the premium thereon except from Agency revenues and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged as security for the payment of the principal of or the interest or premium on such Agency bond or note.

Expenses incurred by the Agency in carrying out the provisions of this Chapter shall be payable from revenues and other funds provided pursuant to, or available for use under, this Chapter. No liability may be incurred by the Agency beyond the extent to which moneys shall have been so provided.

"§ 159I-15. *Bonds and notes.*

(a) The Agency may provide for the issuance at one time or from time to time of bonds and notes, including bond anticipation notes and renewal notes, of the Agency to carry out and effectuate its corporate purposes. The principal of and interest on such bonds or notes shall be payable solely from funds provided under this Chapter for such payment. Any bond anticipation notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, notes may be paid from any available Agency revenues or other funds provided for this purpose. Bonds and notes may also be paid from the proceeds of any credit facility. The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Agency or otherwise, at such price or prices, on such date or dates, and upon such terms and conditions as may be determined by the Agency. The bonds or notes may also be made payable from time to time on demand or tender for purchase by owner, all upon such terms and conditions as may be determined by the Agency. Any such bonds or notes shall bear interest at such rate or rates, including variable rates, as may be determined by the Local Government Commission with the approval of the Agency.

The Agency may also issue one or more series of bonds and notes, including bond anticipation notes and renewal notes, from time to

time, to make loans to an individual unit of local government upon a determination, by resolution, of the Board as follows:

(1) The issuance of a series of bonds or notes by the Agency in order to make a loan to an individual unit of local government, as distinct from the proceeds of such series of bonds or notes being used to provide a pool of money to make a number of such loans, does not materially adversely affect the ability of the Agency to effect its general policy of making loans on a pooled basis.

(2) The issuance of the series of bonds or notes will not economically disadvantage the Agency and will provide an economic benefit to the individual unit of local government.

(3) The use, if any, of any of the proceeds of the Solid Waste Management Loan Fund in connection with the Agency financing for an individual unit of local government is consistent with the Agency's use of any proceeds in connection with loans made on a pooled basis.

All of the provisions of this Chapter, including, without limitation, G.S. 159I-13 relating to the sources and security that may be used by units of local government in making loans, shall apply to any Agency financing for an individual unit of local government.

(b) In fixing the details of bonds or notes, the Agency may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports such bonds or notes, unless the Local Government Commission specifically determines that a credit facility is not required upon a finding and determination by the Local Government Commission that the absence of a credit facility will not materially and adversely affect the financial position of the Agency and the marketing of the bonds or notes at a reasonable interest cost to the Agency;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of such bonds or notes including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Agency.

(c) As used in this section:

(1) 'Credit facility' means an agreement entered into by the Agency with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the Agency agreeing to repay the provider of such credit facility in accordance with the terms and provisions of such agreement; the provider of any credit facility may be located either within or without the United States of America.

(2) 'Par formula' means any provision or formula adopted by the Agency to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes including:

a. A provision providing for the adjustment so that the purchase price of the bonds or notes in the open market would be as close to par as possible;

b. A provision providing for the adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time; or

c. Such other provisions as the Agency may determine to be consistent with this Chapter and will not materially and adversely affect the financial position of the Agency and the marketing of the bonds or notes at a reasonable interest cost to the Agency.

(d) Notes shall mature at such time or times and bonds shall mature, not exceeding 40 years from their date or dates, as may be determined by the Agency. The Agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or place of payment of principal and interest, which may be any bank or trust company within or without the United States. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons, if any, shall cease to be this officer before the delivery thereof, this signature or the facsimile shall nevertheless be valid and sufficient for

all purposes the same as if the officer had remained in office until the delivery and any bond or note or coupon may bear the facsimile signatures of such persons who at the actual time of the execution thereof shall be the proper officers to sign although at the date of the bond or note or coupon the persons may not have been these officers. The Agency may also provide for the authentication of the bonds or notes by a trustee or other authenticating agent. The bonds or notes may be issued as certificated or uncertificated obligations or both, and in coupon or in registered form, or both, as the Agency may determine. Provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Any system for registration may be established as the Agency may determine.

(e) No bonds or notes may be issued by the Agency under this Chapter unless the issuance thereof is approved and the bonds or notes are sold by the Local Government Commission as provided in this Chapter. The Agency shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of the bonds or notes which application shall contain any such information and shall have attached to it any such documents concerning the proposed financing as the Secretary of the Local Government Commission may require.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as well as the effect of the proposed financing upon any scheduled or proposed sale of obligations by the State, by any of its agencies or departments, or by any unit of local government in the State. The Local Government Commission shall approve the issuance of such bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will satisfy such criteria and will effect the purposes of this Chapter.

Upon the filing with the Local Government Commission of a written request of the Agency requesting that its bonds or notes be sold, the bonds or notes may be sold by the Local Government Commission in such manner, either at public or private sale, and for such price or prices at the Local Government Commission shall determine to be in the best interest of the Agency and to effect the purposes of this Chapter, provided that the sale shall be approved by the Agency.

(f) The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be

disbursed in such manner and under such restrictions, if any, as the Agency may provide in the resolution authorizing the issuance of, or in any trust agreement securing, such bonds or notes.

(g) Prior to the preparation of definitive bonds, the Agency may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Agency may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(h) Bonds or notes may be issued under the provision of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau, or agency of the State and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things that are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes.

"§ *159I-16. Trust agreement or resolution.*

(a) In the discretion of the Agency, any bonds and notes issued under the provisions of this Chapter may be secured by a trust agreement by and between the Agency and a corporate trustee or by a resolution providing for the appointment of a corporate trustee. The corporate trustee may be, in either case, any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or resolution may pledge or assign all or part of the revenues or assets of the Agency, including, without limitation, loan agreements, agreements or commitments to enter into loan agreements, contracts, agreements and other security or investment obligations, any fees or charges made or received by the Agency, the moneys received in payment of loans and interest thereon, and any other moneys received by the Agency. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued thereunder as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Agency in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues or assets of the Agency, the duties of the Agency with respect to the acquisition and disposition of any project and the purchase, acceptance and disposition of any loan agreement, the charges and collection of any revenues and administrative charges, the terms and conditions for the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this Chapter shall be equally and ratably secured by a pledge, charge, and

lien upon the revenues or assets provided in such trust agreement or resolution, without priority by reason of number, or dates of bonds or notes, execution, or delivery, in accordance with the provision of this Chapter and of such trust agreement or resolution; except that the Agency may provide in such trust agreement or resolution that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in such trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depositary of the proceeds of bonds or notes, revenues, assets, or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Agency. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by any such owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the Agency may deem reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds and notes or from any other funds available to the Agency.

(b) The Agency may set the terms and conditions of loan agreements, including, without limitation, the repayment terms, so as to provide a fund sufficient, with such other funds as may be made available therefor, including, without limitation, investment income and the proceeds of administrative charges to the extent determined by the Agency:

(1) To pay the costs of operation of the Agency,

(2) To pay the principal of and the interest on all bonds and notes as the same shall become due and payable, and

(3) To create and maintain any reserves provided for in the trust agreement or resolution securing such bonds or notes.

(c) All pledges of any assets or revenues of the Agency as authorized by this chapter shall be valid and binding from the time when such pledges are made. All such assets or revenues so pledged and thereafter received by the Agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Agency, irrespective of whether such parties have noticed thereof. The trust agreement or resolution by which a

pledge is created or any loan obligation need not be filed or recorded except in the records of the Agency.

(d) The State does pledge to and agree with the holders of any bonds or notes issued by the Agency that so long as any of such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the Agency at the time of issuance of the bonds or notes to set the terms and conditions of loan agreements in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with such other funds as may be made available therefor, including without limitation, investment income and the proceeds of administrative charges to the extent determined by the Agency, to pay the costs of operation of the Agency to pay the principal of and the interest on all bonds and notes as the same shall become due and payable, and to create and maintain any reserves provided therefor, and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged.

"*§ 159I-17. Trust funds.*

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to this Chapter, including, without limitation, payments made under and the proceeds received from the sale or other disposition of loan agreement, proceeds received from the disposition by the Agency of any project and any other revenues and funds received by the Agency, (except any portion, as designated by the Agency, representing administrative charges), shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of such moneys may be invested temporarily pending the disbursement thereof and shall provide that any officer with whom or any bank or trust company with which such moneys shall be deposited, shall act as trustee of such moneys and shall hold and apply the same for the purposes of this Chapter subject to such regulations as this Chapter or such resolution or trust agreement may provide. Any such moneys may be deposited and invested as provided in G.S. 159-30 and G.S. 147-69.1, as either section may be amended from time to time, provided, however that:

(1) Any deposit or investment authorized by G.S. 159-30 or G.S. 147-69.1 may be deposited or invested with any bank located inside or outside the State, including outside the United States of America, provided that any such bank is a

bank whose unsecured obligations are rated in either of the two highest rating categories by either Moody's Investors Service or Standard & Poor's Corporation; and

(2) Any deposit or investment may be made pursuant to either G.S. 159-30 or G.S. 147-69.1. If one section is less restrictive or the other section authorizes additional deposit and investment options, the Agency may proceed under either section in order that the Agency shall have the broadest deposit and investment options available under either section.

"*§ 159I-18. Remedies.*

Any owner of bonds or notes issued under the provisions of this Chapter or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the Agency pursuant to this Chapter; and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution by the Agency or by any officer thereof.

"*§ 159I-19. Status of bonds and notes under Uniform Commercial Code.*

All bonds and notes and interest coupons, if any, issued under this Chapter are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

"*§ 159I-20. Bonds and notes eligible for investment.*

Bonds and notes issued under the provisions of this Chapter are hereby made securities in which all public offices, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities, which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

"*§ 159I-21. Refunding bonds and notes.*

(a) The Agency may issue bonds and notes for the purposes of refunding any bonds or notes issued pursuant to this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity of such bonds or notes, and, if deemed advisable by the Agency, for any additional corporate purposes of the Agency.

Any such refunding bonds or notes may bear interest at rates, including variable rates as authorized in G.S. 159I-15, lower, the same as, or higher than and have maturities shorter than, the same as, or longer than the bonds or notes being refunded. The proceeds of any such refunding bonds or notes may be applied:

(1) To the payment and retirement of the bonds or notes being refunded by direct application to such payment and retirement;

(2) To the payment and retirement of the bonds or notes being refunded by the deposit in trust of such proceeds;

(3) To the payment of any expenses incurred in connection with such refunding; and

(4) For any other uses not inconsistent with such refunding.

(b) Any money so held in trust may be invested in:

(1) Direct obligations of the United States of America.

(2) Obligations, the principal of and the interest on which are guaranteed by the United States of America.

(3) Evidences of ownership of a proportionate interest in specified obligations described in subdivision (1) and (2) of this subsection, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian.

(4) Obligations of the State or local governments of the State, provision for the payment of the principal of and interest on which obligations shall have been made by deposit with a trustee or escrow agent of obligations described in subdivisions (1), (2) or (3) of this subsection, the maturing principal of any interest on which, when due and payable, shall provide sufficient money with any other money held in trust for such purpose to pay the principal of, premium, if any, and interest on such obligations of the State or units of local government and which are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service.

(5) Obligations of the State or local governments of the State, the principal of and interest on which, when due and payable, have been insured by a bond insurance company

which is rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service.

(6) Full faith and credit obligations of the State or local governments of the State, which are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service.

(7) Any obligations or investments in which the State Treasurer is authorized, at the time of such investment, to invest funds of the State.

The proceedings providing for the issuance of any refunding bonds or notes may limit the investments in which the proceeds of a particular refunding issue may be invested.

Nothing in this section shall be construed as a limitation on:

(1) The duration of any deposit in trust for the retirement of bonds or notes being refunded, but which shall not have matured and which shall not be then redeemable or, if then redeemable, shall not have been called for redemption; or

(2) The power to issue bonds or notes for the combined purpose of refunding bonds or notes and providing moneys for any corporate purpose as provided in this Chapter.

"§ 159I-22. *Officers not liable.*

No member or officer of the Agency shall be subject to any personal liability or accountability by reason of his execution of any bonds or notes or the issuance thereof.

"§ 159I-23. *Tax exemption.*

All of the bonds and notes authorized by this Chapter and the coupons, if any, appertaining thereto, and their transfer (including any profit made on the sale thereof), shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes. The interest on the bonds and notes shall not be subject to taxation as to income, nor shall the bonds, notes, and coupons, if any, be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation.

"§ 159I-24. *Conflicts of interest.*

If any member, officer, or employee of the Agency shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation, not including units of local government interested directly or indirectly, in any contract with the Agency, such interest shall be disclosed to the Agency and shall be set forth in the minutes of the Agency. The member, officer, or employee having an interest therein shall not participate on behalf of the Agency in the authorization of

any such contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this section may not affect the validity of any bonds, notes, or loan agreements issued pursuant to the provisions of this Chapter.

"§ *159I-25. Disbursement.*

(a) The proceeds of any bonds or notes to be used to make loans shall be disbursed by, or pursuant to the direction of, the Office of State Budget and Management. No such proceeds shall be disbursed until the Office of State Budget and Management has received from the Division a certificate of eligibility that states that the applicant meets all eligibility criteria, and that all procedural requirements of this Chapter have been met.

(b) Once the prerequisites for disbursement have been satisfied pursuant to subsection (a) of this section, the proceeds shall be disbursed as the Board may provide.

"§ *159I-26. Withdrawal of commitment.*

Failure of an applicant, within one year of the date of acceptance of a loan application to arrange for necessary financing of the proposed project, shall constitute sufficient cause for withdrawal of the commitment. Prior to withdrawal of a commitment, the Division shall give due consideration to any extenuating circumstances presented by the applicant as reasons for its failure to arrange necessary financing. The commitment may be extended for an additional period of time if, in the judgment of the Division, an extension is justified.

"§ *159I-27. Inspection.*

(a) The Division shall perform one or more inspections of each project and shall monitor its progress. If the Division determines that the project is not in substantial compliance with the approved schedule of implementation, the Division may revoke its approval of the project, further disbursement of loan proceeds may be rescinded, and the outstanding loan, together with accrued interest, may immediately become due and payable.

(b) Inspection of a project for which a loan has been made under this Chapter may be performed by qualified personnel of the Division or by qualified professional engineers, registered in this State, who have been approved by the Division. No person may be approved to perform inspections who is an officer or employee of the unit of local government to which the loan was made or who is an owner, officer, employee or agent of a contractor or subcontractor engaged in the construction of any project for which the loan was made.

"§ *159I-28. Rules.*

(a) The Office of State Budget and Management and the Commission for Health Services of the Department of Environment, Health, and Natural Resources may adopt, modify and repeal rules

establishing the procedures to be followed in the administration of this Chapter and regulations interpreting and applying the provisions of this Chapter, as provided in the Administrative Procedure Act. Uniform rules may be jointly adopted where feasible and desirable, and no rule jointly adopted may be modified or revoked except upon the concurrence of both agencies involved.

(b) A copy of the rules adopted to implement the provisions of this Chapter shall be furnished free of charge by the Division and the Office of State Budget and Management to any unit of local government.

"§ 159I-29. *Annual reports to Joint Legislative Commission on Government Operations.*

(a) The Office of State Budget and Management and the Division shall prepare and file on or before July 31 of each year with the Joint Legislative Commission on Governmental Operations a consolidated report for the preceding fiscal year concerning the allocation of loans authorized by this Chapter.

(b) The portion of the report prepared by the Office of State Budget and Management shall set forth for the preceding fiscal year itemized and total allocations for loans authorized by the Division. The Office of State Budget and Management shall also prepare a summary report of all allocations for each fiscal year; the total funds received and allocations made; and the total unallocated funds as of the end of the preceding fiscal year.

(c) The portion of the report prepared by the Division shall include:

(1) Identification of each loan made during the preceding fiscal year; the total amount of the loan commitments; the sums actually paid during the preceding fiscal year to each loan disbursed and to each loan previously committed but unpaid; and the total loan funds paid during the preceding fiscal year;

(2) A summary for all preceding years of the total number of loans made; the total funds committed to these loans; the total sum actually paid to loans; and

(3) Assessment and evaluation of the effects that approved projects have had upon solid waste management within the purposes of this Chapter.

(d) The report shall be signed by each of the chief executive officers of the two State agencies preparing the report.

"§ 159I-30. *Additional powers of units of local government; issuance of special obligation bonds and notes.*

(a) Any unit of local government may borrow money for the purpose of financing or refinancing its cost of the acquisition or construction of a project and may issue special obligation bonds and

notes, including bond anticipation notes and renewal notes, pursuant to the provisions of this section and the applicable provisions of this Chapter for such purpose.

(b) Each unit of local government may agree to apply to the payment of a special obligation bond or note any available source or sources of revenues of the unit and, to the extent the generation of the revenues is within the power of the unit, to enter into covenants to take action in order to generate the revenues, provided the agreement to use such sources to make payments or such covenant to generate revenues does not constitute a pledge of the unit's taxing power.

No agreement or covenant shall contain a nonsubstitution clause which restricts the right of a unit of local government to replace or provide a substitute for any project financed pursuant to this section.

The obligation of a unit of local government with respect to the sources of payment shall be specifically identified in the proceedings of the governing body authorizing the unit to issue the special obligation bonds or notes. The sources of payment so specifically identified and then held or thereafter received by a unit or any fiduciary thereof shall immediately be subject to the lien of the proceedings without any physical delivery of the sources or further act. The lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a unit without regard to whether the parties have notice thereof. The proceedings or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in this Chapter.

Any special obligation bonds or notes may provide additional security by the granting of a security interest in the project financed to secure payment of the purchase money provided by such bonds or notes, including a deed of trust on any real property so acquired.

(c) Any bond anticipation notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, the notes may be paid from any sources available under G.S. 159I-30(b). Bonds or notes may also be paid from the proceeds of any credit facility. The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the unit of local government or otherwise, at such price or prices, on such date or dates, and upon such terms and conditions as may be determined by the unit. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner, upon terms and conditions determined by the unit.

(d) The interest payable by a unit on any special obligation bonds or notes may be at such rate or rates, including variable rates as

authorized in this section, as may be determined by the Local Government Commission with the approval of the governing body of the unit. Such approval may be given as the governing body of the unit may direct, including, without limitation, a certificate signed by a representative of the unit designated by the governing body of the unit.

(e) Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be payable solely from any one or more of the sources of payment authorized by this section as may be specified in the proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every special obligation bond and note shall recite in substance that the principal and interest and any premium on such bond or note are payable solely from the sources of payment specified in the bond order or trust agreement under which it is authorized or secured, provided that:

(1) Any such use of such sources will not constitute a pledge of the unit's taxing owner; and

(2) The municipality is not obligated to pay such principal or interest or premium except from such sources.

(f) In fixing the details of bonds or notes, the unit of local government may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports such bonds or notes, unless the Local Government Commission specifically determines that a credit facility is not required upon a finding and determination by the Local Government Commission that the absence of a credit facility will not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of such bonds or notes including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the unit.

(g) As used in this section:

(1) 'Credit facility' means an agreement entered into by the unit with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution proving for prompt payment of all or any part of the principal, or purchase price (whether at maturity, presentment, or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the unit agreeing to repay the provider of such credit facility in accordance with the terms and provisions of such agreement; the provider of any credit facility may be located either within or without the United States of America.

(2) 'Par formula' means any provision or formula adopted by the unit to provide for the adjustment, from time to time of the interest rate or rates borne by any bonds or notes including:

a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible;

b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time; or

c. Such other provision as the unit may determine to be consistent with this section and the applicable provisions of this Chapter and does not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit.

The obligation of a unit of local government under a credit facility to repay any drawing thereunder may be made payable and otherwise secured, to the extent applicable, as provided in this section.

(h) Notes shall mature at such time or times and bonds shall mature, not exceeding 40 years form their date or dates, as may be determined by the unit of local government, provided that no such

maturity dates may exceed the maximum maturity periods prescribed by the Local Government Commission pursuant to G.S. 159-122, as it may be amended from time to time. The unit shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or place of payment of principal and interest, which may be any bank or trust company within or without the United States. In case any officer of such unit whose signature, or a facsimile of whose signature, shall appear on any bonds or notes or coupons, if any, shall cease to be such officer before delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. Any bond or note or coupon may bear the facsimile signatures of such persons who at the actual time or the execution thereof shall be the proper officers to sign although at the date of such bond or note or coupon such persons may not have been such officer. The unit may also provide for the authentication of the bonds or notes by a trustee or other authenticating agent. The bonds or notes may be issued as certificated or uncertificated obligations or both, and in coupon or in registered form, or both, as the unit may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Any system for registration may be established as the unit may determine.

(i) No bonds or notes may be issued by a unit of local government under this section unless the issuance is approved and the bonds or notes are sold by the Local Government Commission as provided in this section and the applicable provisions of this Chapter. The unit shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of such bonds or notes, which application shall contain such information and shall have attached to it such documents concerning the proposed financing as the Secretary of the Local Government Commission may require. The Commission may prescribe the form of the application. Before the Secretary accepts the application, the Secretary may require the governing body of the unit or its representatives to attend a preliminary conference, at which time the Secretary or the deputies of the Secretary may informally discuss the proposed issue and the timing of the steps taken in issuing the special obligation bonds or notes.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as either may be amended from time to time, as well as the effect of the proposed financing upon any scheduled or proposed sale of obligations by the State or by any of its agencies or departments or by any unit of local government in the State. The Local Government Commission shall approve the issuance of such bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will satisfy such criteria and will effect the purposes of this section and the applicable provisions of this Chapter. An approval of an issue shall not be regarded as an approval of the legality of the issue in any respect. A decision by the Local Government Commission denying an application is final.

Upon the filing with the Local Government Commission of a written request of the unit requesting that its bonds or notes be sold, such bonds or notes may be sold by the Local Government Commission in such manner, either at public or private sale, and for such price or prices as the Local Government Commission shall determine to be in the best interests of the unit and to effect the purposes of this section and the applicable provisions of this Chapter, provided that such sale shall be approved by the unit.

(j) The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in such manner and under such restrictions, if any, as the unit may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

(k) Prior to the preparation of definitive bonds, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The unit may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(l) Bonds or notes may be issued under the provisions of this section and the applicable provisions of this Chapter without obtaining, except as otherwise expressly provided in this section and the applicable provisions of this Chapter, the consent of any department, division, commission, board, body, bureau, or agency of the State and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things that are specifically required by this section, the applicable provisions of this Chapter, and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes.

(m) In the discretion of the unit of local government, any bonds and notes issued under the provisions of this section may be secured by a trust agreement by and between the unit and a corporate trustee or by a resolution providing for the appointment of a corporate trustee. Bonds and notes may also be issued under an order or resolution without a corporate trustee. The corporate trustee may be, in either case any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or resolution may pledge or assign such sources of revenue as may be permitted under this section. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued thereunder as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues of the unit, the duties of the unit with respect to the project, the disposition of any charges and collection of any revenues and administrative charges, the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this section shall be equally and ratably secured by a lien upon the revenues provided in such trust agreement or resolution, without priority by reasons of number, or dates of bonds or notes, execution, or delivery, in accordance with the provision of this section and of such trust agreement or resolution; provided, however, that the unit may provide in such trust agreement or resolution that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in such trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depositary of the proceeds of bonds or notes, revenues, or any other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the unit. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by the owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the unit may deem reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or from any other funds available.

The State does pledge to, and agree with, the holders of any bonds or notes issued by any unit that so long as any of such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the unit at the time of issuance of the bonds or notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged.

(n) The provisions of G.S. 159I-15(a), (d), and (e) relating to the Agency and its bonds and notes shall apply to a unit of local government and its bonds and notes issued under this section and the applicable provisions of this Chapter, provided that the source or sources of revenue available to pay bonds and notes of a unit of local government shall be limited as provided in this section.

(o) The provisions of G.S. 159I-17 relating to the Agency and its trust funds and investments shall apply to a unit of local government and its trust funds and investments, provided that any such moneys of a unit shall be deposited and invested only as provided in G.S. 159-30, as it may be amended from time to time.

(p) The provisions of G.S. 159I-18, 159I-19, 159I-20, and 159I-23 relating to remedies, the Uniform Commercial Code, investment eligibility and tax exemption as such relate to the Agency's bonds and notes shall apply to a unit of local government and its bonds and notes."

Sec. 2. G.S. 159-13(b)(15) reads as rewritten:

"(15) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the governing board the right to limit or not to make such appropriation."

Sec. 3. G.S. 159-7(b)(4) reads as rewritten:

"(4) 'Debt service' is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, to maintain sinking funds, and to pay installments on debt instruments issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General Statutes accruing within a fiscal year."

Sec. 4. G.S. 159-35(c) reads as rewritten:

"(c) The secretary shall mail to each unit of local government not later than 30 days prior to the due date of each payment due to the

State under debt instruments issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General Statutes a statement of the amount so payable, the due date, the amount of any moneys due to the unit of local government that will be withheld by the State and applied to the payment, the amount due to be paid by the unit of local government from local sources, the place to which payment should be sent, and a summary of the legal penalties for failing to honor the debt instrument according to its terms. Failure of the secretary timely to mail such statement or otherwise comply with the provisions of this subsection (c) shall not affect in any manner the obligation of a unit of local government to make payments to the State in accordance with any such debt instrument."

Sec. 5. G.S. 159-123(b)(3) reads as rewritten:

"(3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Chapter 159I of the General Statutes."

Sec. 6. G.S. 159-148 reads as rewritten:

"§ *159-148. Contracts subject to Article; exceptions.*

(a) Except as provided in subsection (b) of this section, this Article applies to any contract, agreement, memorandum of understanding, and any other transaction having the force and effect of a contract (other than agreements made in connection with the issuance of revenue bonds, special obligation bonds issued pursuant to Chapter 159I of the General Statutes, or of general obligation bonds additionally secured by a pledge of revenues) made or entered into by a unit of local government (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in Chapter 159I of the General Statutes), relating to the lease, acquisition, or construction of capital assets, which contract

(1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, and

(2) Obligates the unit to pay sums of money to another, without regard to whether the payee is a party to the contract, and

(3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, to the extent of five hundred thousand dollars ($500,000) or a sum equal to one tenth of one percent (1/10 of 1%) of the appraised value of property subject to taxation by the contracting unit (before the application of any assessment ratio), whichever is less, and

(4) Obligates the unit, expressly or by implication, to exercise its power to levy taxes either to make payments falling due

under the contract, or to pay any judgment entered against the unit as a result of the unit's breach of the contract.

Contingent obligation shall be included in calculating the value of the contract. Several contracts that are all related to the same undertaking shall be deemed a single contract for the purposes of this Article. When several contracts are considered as a single contract, the term shall be that of the contract having the longest term, and the sums to fall due shall be the total of all sums to fall due under all single contracts in the group.

(b) This Article shall not apply to:

(1) Contracts between a unit of local government and the State of North Carolina or the United States of America (or any agency of either) entered into as a condition to the making of grants or loans to the unit of local government.

(2) Contracts for the purchase, lease, or lease with option to purchase of motor vehicles or voting machines.

(3) Loan agreements entered into by a unit of local government pursuant to the North Carolina Solid Waste Management Loan Program, Chapter 159I of the General Statutes."

Sec. 7. G.S. 159-165 reads as rewritten:

"*§ 159-165. Sale and delivery of bond anticipation notes.*

(a) Bond anticipation notes of a municipality, including special obligation bond anticipation notes issued pursuant to Chapter 159I of the General Statutes, shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Bond anticipation notes of the State shall be sold by the State Treasurer at public or private sale, upon such terms and conditions, and according to such procedures as the State Treasurer may prescribe.

(b) When the bond anticipation notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The net proceeds of revenue bond anticipation notes or special obligation bond anticipation notes shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed."

Sec. 8. G.S. 105-198 reads as rewritten:

"*§ 105-198. Intangible personal property.*

The intangible personal properties enumerated and defined in this Article or schedule are hereby classified under authority of Section 2(2), Article V of the Constitution, and the taxes levied thereon are for the benefit of the State ~~and the~~ for distribution to political subdivisions of the State ~~as hereinafter provided and said taxes so levied for the benefit of the political subdivisions of the State are levied for and on behalf of said political subdivisions of the State to the same extent and manner as if said levies were made by the governing authorities of the said subdivision for distribution therein~~ as hereinafter provided. Banks or banking associations, trust companies or any combination of such facilities or services shall be subject to the provisions of this Article for taxable years beginning on and after January 1, 1974."

Sec. 9. This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

Sec. 10. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision.

Sec. 11. G.S. 105-213(a) reads as rewritten:

"(a) The Secretary of Revenue shall keep a separate record by counties of the taxes collected under the provisions of this Article and shall, as soon as practicable after the close of each fiscal year, certify to the State Disbursing Officer and to the State Treasurer the amount of such taxes to be distributed to each county and municipality in the State. The State Disbursing Officer shall thereupon issue a warrant on the State Treasurer to each county and municipality in the amount so certified.

In determining the amount to be distributed, the Secretary shall deduct from the net amount of taxes collected under this Article, which is the total amount collected less refunds, the cost to the State for the preceding fiscal year to:

(1) Collect and administer the taxes levied under this Article;
(2) Perform the duties imposed upon the Department of Revenue by Article 15 of this Chapter;
(3) Operate the Property Tax Commission; and
(4) Operate a training program in property tax appraisal and assessment administration by the Institute of Government.

The Secretary shall allocate the net amount of taxes collected under this Article, less the deductions enumerated above, to the counties according to the county in which the taxes were collected. The

Secretary shall then increase the amount allocable to each county by a sum equal to forty percent (40%) of the amount of tax on accounts receivable allocated to the county on the basis of collections. The amounts so allocated to each county shall in turn be divided between the county and all municipalities therein in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding such distribution. For the purpose of computing the distribution of the intangibles tax to any county and the municipalities located therein for any year with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.

It shall be the duty of the chairman of the board of county commissioners of each county and the mayor of each municipality therein to report to the Secretary of Revenue such information as he may request for his guidance in making said allotments. In the event any county or municipality fails to make such report within the time prescribed, the Secretary of Revenue may disregard such defaulting unit in making said allotments. The amounts so allocated to each county and municipality shall be distributed and used by said county or municipality in proportion to other property tax levies made for the various funds and activities of the taxing unit receiving said allotment; provided, however, that a county or municipality may, without regard to any such requirement as to proportionality, use amounts so allocated and amounts allocated under G.S. 105-213.1 and distributed to the county or municipality to secure its obligation under a loan agreement entered into pursuant to the North Carolina Solid Waste Management Loan Program, Chapter 159I of the General Statutes."

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

S.B. 492 **CHAPTER 757**

AN ACT TO MAKE TECHNICAL CHANGES TO THE LAW CONCERNING THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 17C-2(c) reads as rewritten:

"(c) 'Criminal justice officer(s)' means and incorporates the administrative and subordinate personnel of all the departments, agencies, units or entities comprising the 'criminal justice agencies,' as defined in subsection ~~(a).~~ (b), who are sworn law-enforcement officers, both State and local, with the power of arrest; State correctional officers; State probation/parole ~~and parole officers;~~ officers, supervisory and administrative personnel of local confinement facilities; ~~or~~ State youth ~~correctional officers.~~ services officers; State probation/parole intake officers; State probation/parole officers-surveillance; State probation/parole intensive officers; and State parole case analysts."

Sec. 2. G.S. 17C-3 reads as rewritten:

"*§ 17C-3. North Carolina Criminal Justice Education and Training Standards Commission established; members; terms; vacancies.*

(a) There is ~~hereby~~ established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called 'the Commission,' in the Department of Justice. The Commission shall be composed of 26 members as follows:

(1) Police Chiefs. -- Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.

(2) Police Officers. -- Three police officials appointed by the North Carolina ~~Association of~~ Police Executives Association~~, one police officer and one company police officer~~ and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

(3) Departments. -- The Attorney General of the State of North Carolina; the Secretary of the Department of Crime Control and Public Safety; the Secretary of the Department of Human Resources; the Secretary of the Department of Correction; the President of the Department of Community Colleges.

(4) At-large Groups. -- One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one ~~criminal justice educator~~ criminal justice professional selected by the North Carolina ~~Association of Criminal Justice Educators;~~ Criminal Justice Association; one sworn law-enforcement officer selected by the North State

Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. -- The President of The University of North Carolina; the Director of the Institute of Government; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered years.

(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a), serving as a police chief; three members from subdivision (2) of subsection (a), one serving as a police ~~official, one serving as a police officer, and one serving as a company police officer;~~ official, and two criminal justice officers; one member from subdivision (4) of subsection (a), appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a), one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a), serving as a police chief; one member from subdivision (2) of subsection (a), serving as a police official; and two members from subdivision (4) of subsection (a), one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a), one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a), serving as a police official; and three members from subdivision (4) of subsection (a), one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina ~~Association of Criminal Justice Educators.~~ Criminal Justice

Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the Secretary of the Department of Crime Control and Public Safety, the Secretary of the Department of Human Resources, the Secretary of the Department of Correction, the President of The University of North Carolina, the Director of the Institute of Government, and the President of the Department of Community Colleges shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

Sec. 3. G.S. 17C-4 reads as rewritten:

"§ *17C-4. Compensation.*

(a) Members of the Commission who are State officers or employees shall receive no compensation for serving on the Commission, but may be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no compensation for serving on the Commission, but may be reimbursed for their expenses in accordance with G.S. 138-5(b). All other members of the Commission may receive compensation and reimbursement for expenses in accordance with G.S. 138-5.

(b) The Chairman of the Commission may appoint such ad hoc members of the Commission's standing and select committees as are necessary to carry out the business of the Commission, and such

service shall be reimbursed as provided in G.S. 17C-4(a), subject to the approval of the Attorney General."

Sec. 4. G.S. 17C-6 reads as rewritten:

"*§ 17C-6. Powers of Commission.*

(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

(1) Promulgate rules and regulations for the administration of this Chapter, which rules may require (i) the submission by any criminal justice agency of information with respect to the employment, education, retention, and training of its criminal justice officers, and (ii) the submission by any criminal justice training school of information with respect to its criminal justice training programs that are required by this Chapter;

(2) Establish minimum educational and training standards that must be met in order to qualify for entry level employment and retention as a criminal justice officer in temporary or probationary status or in a permanent position;

(3) Certify, pursuant to the standards that it has established for the purpose, persons as qualified under the provisions of this Chapter to be employed at entry level and retained as criminal justice officers;

(4) Establish minimum standards for the certification of criminal justice training schools and programs or courses of instruction that are required by this Chapter;

(5) Certify, pursuant to the standards that it has established for the purpose, criminal justice training schools and programs or courses of instruction that are required by this Chapter;

(6) Establish minimum standards and levels of education ~~or equivalent~~ and experience for all criminal justice ~~teachers~~ instructors who participate in programs or courses of instruction that are required by this Chapter;

(7) Certify, pursuant to the standards that it has established for the purpose, criminal justice ~~teachers~~ instructors who participate in programs or courses of instruction that are required by this Chapter;

(8) ~~Make~~ Investigate and make such evaluations as may be necessary to determine if criminal justice ~~agencies~~ agencies, schools, and individuals are complying with the provision of this Chapter;

(9) Adopt and amend bylaws, consistent with law, for its internal management and control;

(10) Enter into contracts incident to the administration of its authority pursuant to this Chapter;

(11) Establish minimum standards and levels of training for certification and periodic recertification of operators of and instructors for training programs in radio microwave and other electronic speed-measuring instruments;

(12) Certify and recertify, pursuant to the standards that it has established, operators and instructors for training programs for each approved type of radio microwave and other electronic speed-measuring instruments;

(13) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of radio microwave and other speed-measuring instruments and establish the procedures for operation of each approved instrument and standards for calibration and testing for accuracy of each approved instrument.

(14) Establish minimum standards for in-service training for criminal justice officers.

(b) The Commission shall have the following powers, which shall be advisory in nature and for which the Commission is not authorized to undertake any enforcement actions:

(1) Identify types of criminal justice ~~positions~~ positions, other than entry level positions, for which advanced or specialized training and education are appropriate, and establish minimum standards for the certification of persons as being qualified for those positions on the basis of specified education, training, and experience; provided, that compliance with these minimum standards shall be discretionary on the part of criminal justice agencies with respect to their criminal justice officers;

(2) Certify, pursuant to the standards that it has established for the purpose, criminal justice officers for those criminal justice agencies that elect to comply with the minimum education, training, and experience standards established by the Commission for positions for which advanced or specialized training, education, and experience are appropriate;

(3) Consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of criminal justice training schools and programs or courses of instruction;

(4) Study and make reports and recommendations concerning criminal justice education and training in North Carolina;

(5) Conduct and stimulate research by public and private agencies which shall be designed to improve education and training in the administration of criminal justice;

(6) Study, obtain data, statistics, and information and make reports concerning the recruitment, selection, ~~education~~ education, retention, and training of persons serving criminal justice agencies in this State; to make recommendations for improvement in methods of recruitment, selection, ~~education~~ education, retention, and training of persons serving criminal justice agencies;

(7) Make recommendations concerning any matters within its purview pursuant to this Chapter;

(8) Appoint such advisory committees as it may deem necessary;

(9) Do such things as may be necessary and incidental to the administration of its authority pursuant to this Chapter;

(10) Formulate basic plans for and promote the development and improvement of a comprehensive system of education and training for the officers and employees of criminal justice agencies consistent with its rules and regulations;

(11) Maintain liaison among local, State and federal agencies with respect to criminal justice education and training;

(12) Promote the planning and development of a systematic career development program for criminal justice professionals.

(c) All decisions and rules and regulations heretofore made by the North Carolina Criminal Justice Training and Standards Council and the North Carolina Criminal Justice Education and Training System Council shall remain in full force and effect unless and until repealed or suspended by action of the North Carolina Criminal Justice Education and Training Standards Commission established herein. The present Councils are terminated on December 31, 1979, and their power, duties and responsibilities vest in the North Carolina Criminal Justice Education and Training Standards Commission effective January 1, 1980.

(d) The standards established by the Commission pursuant to G.S. 17C-6(a)(11) and G.S. 17C-6(a)(12) and by the Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6(a)(13) shall not be less stringent than standards established by the U.S. Department of Transportation, National Highway Traffic Safety Administration, National Bureau of Standards, or the Federal Communications Commission."

Sec. 5. G.S. 17C-7 reads as rewritten:

"*§ 17C-7. Functions of the Department of Justice.*

(a) The Attorney General shall provide such staff assistance as the Commission shall require in the performance of its duties.

(b) The Attorney General shall have legal custody of all books, papers, documents, or other records and property of the Commission.

(c) Any papers, documents, or other records which become the property of the Commission that are placed in the criminal justice officer's personnel file maintained by the Commission shall be subject to the same disclosure requirements as set forth in Chapters 126, 153A, and 160A of the General Statutes regarding the privacy of personnel records."

Sec. 6. G.S. 17C-10 reads as rewritten:

"§ *17C-10. Required standards.*

(a) Criminal justice officers shall not be required to meet any requirement of subsections (b) and (c) of this section as a condition of continued employment, nor shall failure of any such criminal justice officer to fulfill such requirements make him ineligible for any promotional examination for which he is otherwise eligible if the criminal justice officer held a permanent appointment prior to ~~September 1, 1983,~~ June 1, 1986, and is an officer, supervisor or administrator of a local confinement facility; prior to March 15, 1973, and is a sworn law enforcement officer with power of arrest; prior to January 1, 1974, and is a State adult correctional officer; prior to July 1, 1975, and is a State probation/parole ~~and parole~~ officer; ~~or~~ prior to July 1, 1974, and is a State youth ~~correctional officer~~ services officer; prior to January 15, 1980, and is a State probation/parole intake officer, prior to April 1, 1983, and is a State parole case analyst; prior to December 14, 1983, and is a State probation/parole officer-surveillance; or prior to February 1, 1987, and is a State probation/parole intensive officer.

The legislature finds, and it is ~~hereby~~ declared to be the policy of this Chapter, that such criminal justice officers have satisfied such entry level requirements by their experience. It is the intent of the Chapter that all criminal justice officers employed at the entry level after the Commission has adopted the required standards shall meet the requirements of this Chapter. All criminal justice officers who are exempted from the required entry level standards by this subsection shall be subject thereafter to the requirements of subsections (b) and (c) of this section as well as the requirements of G.S. 17C-6(a) in order to retain certification.

If any criminal justice officer exempted from the required standards by this provision fails to serve as a criminal justice officer for a 12-month period, said officer shall be required to comply with the required entry level standards established by the Commission pursuant

to the authority otherwise granted in this ~~section.~~ section and in G.S. 17C-6(a).

~~(b) The Commission shall provide, by regulation, that no person shall be appointed as a criminal justice officer at entry level, except on a temporary or probationary basis, unless such person has satisfactorily completed an initial preparatory program of training at a school certified by the Commission. Upon separation of a criminal justice officer from a criminal justice agency within the year of temporary or probationary appointment, the probationary certification shall be terminated by the Commission. Upon the reappointment to the same agency or appointment to another criminal justice agency of an officer who has separated from an agency within the year of probation, the officer shall be charged with the amount of time served during his initial appointment and allowed the remainder of the one year probationary period to complete the basic training requirement. Upon the reappointment to the same agency or appointment to another agency of an officer who has separated from an agency within the year of probation and who has remained out of service for more than one year from the date of separation, the officer shall be allowed another one- year period to satisfy the basic training requirement. Any criminal justice officer appointed on a temporary or probationary basis who does not comply with the training provisions of this Chapter within one year shall not be authorized to exercise the powers of a criminal justice officer and shall not be authorized to exercise the power of arrest. If, however, a criminal justice officer has enrolled in a Commission approved preparatory program of training that concludes later than the end of the officer's probationary period, the Commission may extend, for good cause shown, the probationary period for a period not to exceed six months.~~

(b) The Commission shall provide, by regulation, for a period of probationary employment and certification for criminal justice officers. The Commission may prescribe such training requirements as are required for the award of either probationary or permanent certification of officers, in addition to the pre-employment requirements authorized in G.S. 17C-6(a). Any criminal justice officer appointed on a temporary or probationary basis who does not comply with the training provisions of this Chapter is not authorized to exercise the powers of a criminal justice officer to include the power of arrest. If, however, a criminal justice officer has enrolled in a Commission-approved preparatory program of training that concludes later than the end of the officer's probationary period, and the Commission does not require such training to be completed prior to the award of probationary certification, the Commission may extend,

for good cause shown, the probationary period for a period not to exceed six months.

Upon separation of a criminal justice officer from a criminal justice agency within the prescribed period of temporary or probationary appointment, the officer's probationary certification shall be terminated by the Commission. Upon the reappointment to the same agency or appointment to another criminal justice agency of an officer who has separated from an agency within the probationary period, the officer shall be charged with the cumulative amount of time served during his initial or subsequent appointments and allowed the remainder of the probationary period to complete the Commission's requirements. Upon reappointment to the same agency or appointment to another agency of an officer who has separated from an agency within the probationary period and who has remained out of service for more than one year after the date of separation, the officer shall be allowed another probationary period to satisfy the Commission's requirements.

(c) In addition to the requirements of subsection (b) of this section, the Commission, by rules and regulations, shall fix other qualifications for the ~~employment~~ employment, training, and retention of criminal justice officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of criminal justice ~~offices.~~ officers, and the Commission shall prescribe the means for presenting evidence of fulfillment of these requirements. ~~When a person presents competent evidence that he has been granted an unconditional pardon, to include but not be limited to a pardon of forgiveness, for a crime in this State, any other state, or the United States, the Commission shall not deny, suspend, or revoke that person's certification based solely on the commission of that crime or an alleged lack of good moral character due to the commission of that crime.~~

Where minimum educational standards are not met, yet the individual shows potential and a willingness to achieve the standards by extra study, they may be waived by the Commission for the reasonable amount of time it will take to achieve the standards required. Such an educational waiver shall not exceed 12 months.

(d) The Commission may issue a certificate evidencing satisfaction of the requirements of subsections (b) and (c) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the Commission for approved criminal justice education and training programs in this State."

Sec. 7. G.S. 17C-11 reads as rewritten:

"*§ 17C-11. ~~Injunctions authorized.~~ Power of the Commission to seek injunction.*

~~The Commission is hereby authorized to bring a civil action in the county of the residence of the alleged violation against any criminal justice agency which numbers among its employed or appointed criminal justice officers any criminal justice officer who fails to meet the required standards established by the Commission pursuant to G.S. 17C-10 of this Chapter to enjoin such criminal justice agency from allowing such criminal justice officer to perform any and all criminal justice officer functions, including exercising the power of arrest, until such time as such criminal justice officer shall comply with the required standards established by the Commission pursuant to G.S. 17C-10 of this Chapter.~~

The Commission may appear in its own name and apply to courts having jurisdiction for injunctions to prevent violations of this Chapter or of rules issued pursuant thereto; specifically, the performance of criminal justice officer functions by officers or individuals who are not in compliance with the standards and requirements of G.S. 17C-6(a) and G.S. 17C-10. A single act of performance of a criminal justice officer function by an officer or individual who is performing such function in violation of this Chapter is sufficient, if shown, to invoke the injunctive relief of this section."

Sec. 8. Chapter 17C of the General Statutes is amended by adding a new section to read:

"*§ 17C-13. Pardons.*

When a person presents competent evidence that he has been granted an unconditional pardon for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for an alleged lack of good moral character due to the commission of that crime."

Sec. 9. This act shall become effective October 1, 1989 and shall not apply to pending litigation.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

S.B. 519 **CHAPTER 758**

AN ACT TO CONTINUE REGISTRATION AND DISCLOSURE BY AND TO PROVIDE FOR FINANCIAL EVALUATION OF CONTINUING CARE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 50.

"Registration, Disclosure, Contract, and Financial Monitoring Requirements for Continuing Care Facilities.

"§ 58-765. *Definitions.*

As used in this Article, unless otherwise specified:

(1) 'Continuing care' means the furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, pursuant to an agreement effective for the life of the individual or for a period in excess of one year.

(2) 'Entrance fee' means a payment that assures a resident a place in a facility for a term of years or for life.

(3) 'Facility' means the place or places in which a provider undertakes to provide continuing care to an individual.

(4) 'Health related services' means, at a minimum, nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services.

(5) 'Living unit' means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

(6) 'Provider' means the promoter, developer, or owner of a continuing care facility, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care under a continuing care facility contract, or that represents himself or itself as providing continuing care of 'life care.'

(7) 'Resident' means a purchaser of, a nominee of, or a subscriber to, a continuing care contract.

(8) 'Hazardous financial condition' means a provider is insolvent or in eminent danger of becoming insolvent.

"§ 58-766. *License.*

(a) No provider shall engage in the business of providing continuing care in this State without a license to do so obtained from the Commissioner as provided in this Article.

(b) The application for a license shall be filed with the Department by the provider on forms prescribed by the Department and within a

period of time prescribed by the Department; and shall include all information required by the Department pursuant to rules adopted by it under this Article including, but not limited to, the disclosure statement meeting the requirements of this Article and other financial and facility development information required by the Department. The application for a license must be accompanied by an application fee of two hundred dollars ($200.00).

(c) Upon receipt of the complete application for a license in proper form, the Department shall, within 10 business days, issue a notice of filing to the applicant. Within 90 days of the notice of filing, the Department shall enter an order issuing the license or rejecting the application.

(d) If the Commissioner determines that any of the requirements of this Article have not been met, the Commissioner shall notify the applicant that the application must be corrected within 30 days in such particulars as designated by the Commissioner. If the requirements are not met within the time allowed, the Commissioner may enter an order rejecting the application, which order shall include the findings of fact upon which the order is based and which shall not become effective until 20 days after the end of the 30-day period. During the 20-day period, the applicant may petition for reconsideration and is entitled to a hearing.

(e) If a facility is accredited by a process approved by the Commissioner as substantially equivalent to the requirements of this section, then the facility shall be deemed to have met the requirements of this section and the Commissioner shall issue a license to the facility.

(f) The Commissioner may, on an annual basis or on a more frequent basis if he deems it to be necessary, in addition to the annual disclosure statement revision required by G.S. 58-771, require every licensed provider to file with the Department any of the information provided by G.S. 58-766(b) for new licensure that the Commissioner, pursuant to rules adopted by him under this Article, determines is needed for review of licensed providers.

"*§ 58-767. Revocation of license.*

(a) The license of a provider shall remain in effect until revoked after notice and hearing, upon written findings of fact by the Commissioner, that the provider has:

(1) Willfully violated any provision of this Article or of any rule or order of the Commissioner;

(2) Failed to file an annual disclosure statement or standard form of contract as required by this Article;

(3) Failed to deliver to prospective residents the disclosure statements required by this Article;

(4) Delivered to prospective residents a disclosure statement that makes an untrue statement or omits a material fact and the provider, at the time of the delivery of the disclosure statement, had actual knowledge of the misstatement or omission;

(5) Failed to comply with the terms of a cease and desist order; or

(6) Has been determined by the Commissioner to be in a hazardous financial condition.

(b) Findings of fact in support of revocation shall be accompanied by an explicit statement of the underlying facts supporting the findings.

(c) If the Commissioner has good cause to believe that the provider is guilty of a violation for which revocation could be ordered, the Commissioner may first issue a cease and desist order. If the cease and desist order is not or cannot be effective in remedying the violation, the Commissioner may, after notice and hearing, order that the license be revoked and surrendered. Such a cease and desist order may be appealed to the Superior Court of Wake County in the manner provided by G.S. 58-54.8. The provider shall accept no new applicant funds while the revocation order is under appeal.

"§ 58-768. *Sale or transfer of ownership.*

No license is transferable, and no license issued pursuant to this Article has value for sale or exchange as property. No provider or other owning entity shall sell or transfer ownership of the facility, or enter into a contract with a third-party provider for management of the facility, unless the Commissioner approves such transfer or contract.

"§ 58-769. *Disclosure statement.*

(a) At the time of, or prior to, the execution of a contract to provide continuing care, or at the time of, or prior to, the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a current disclosure statement to the person with whom the contract is to be entered into, the text of which shall contain at least:

(1) The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity.

(2) The names and business addresses of the officers, directors, trustees, managing or general partners, any person having a ten percent (10%) or greater equity or beneficial interest in the provider, and any person who will be managing the facility on a day-to-day basis, and a description of these persons' interests in or occupations with the provider.

(3) The following information on all persons named in response to subdivision (2) of this section:

a. A description of the business experience of this person, if any, in the operation or management of similar facilities;

b. The name and address of any professional service firm, association, trust, partnership, or corporation in which this person has, or which has in this person, a ten percent (10%) or greater interest and which it is presently intended shall currently or in the future provide goods, leases, or services to the facility, or to residents of the facility, of an aggregate value of five hundred dollars ($500.00) or more within any year, including a description of the goods, leases, or services and the probable or anticipated cost thereof to the facility, provider, or residents or a statement that this cost cannot presently be estimated; and

c. A description of any matter in which the person (i) has been convicted of a felony or pleaded *nolo contendere* to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or (ii) is subject to a currently effective injunctive or restrictive court order, or within the past five years, had any State or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, if the order or action arose out of or related to business activity of health care, including actions affecting a license to operate a foster care facility, nursing home, retirement home, home for aged, or facility subject to this Article or a similar law in another state.

(4) A statement as to whether the provider is, or is not affiliated with, a religious, charitable, or other nonprofit organization, the extent of the affiliation, if any, the extent to which the affiliate organization will be responsible for the financial and contract obligations of the provider, and the provision of the Federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax.

(5) The location and description of the physical property or properties of the facility, existing or proposed, and to the extent proposed, the estimated completion date or dates,

whether construction has begun, and the contingencies subject to which construction may be deferred.

(6) The services provided or proposed to be provided pursuant to contracts for continuing care at the facility, including the extent to which medical care is furnished, and a clear statement of which services are included for specified basic fees for continuing care and which services are made available at or by the facility at extra charge.

(7) A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include:

a. A statement of the fees that will be charged if the resident marries while at the facility, and a statement of the terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirements for entry;

b. The circumstances under which the resident will be permitted to remain in the facility in the event of possible financial difficulties of the resident;

c. The terms and conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident, and the conditions, if any, under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract by the provider or by the resident or in the event of the death of the resident prior to or following occupancy of a living unit;

d. The conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident other than on the death of the prior resident; and

e. The manner by which the provider may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any; and, if the facility is already in operation, or if the provider or manager operates one or more similar continuing care locations within this State, tables shall be included showing the frequency and average dollar amount of each increase in periodic charges, or other recurring fees at each facility or location for the previous five years, or such shorter period as the facility or location may have been operated by the provider or manager.

(8) The health and financial condition required for an individual to be accepted as a resident and to continue as a

resident once accepted, including the effect of any change in the health or financial condition of a person between the date of entering into a contract for continuing care and the date of initial occupancy of a living unit by that person.

(9) The provisions that have been made or will be made, if any, to provide reserve funding or security to enable the provider to perform its obligations fully under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which these funds will be invested, and the names and experience of any individuals in the direct employment of the provider who will make the investment decisions.

(10) Financial statements of the provider certified to by an independent public accountant as of the end of the most recent fiscal year or such shorter period of time as the provider shall have been in existence. If the provider's fiscal year ended more than 120 days prior to the date the disclosure statement is recorded, interim financial statements as of a date not more than 90 days prior to the date of recording the statement shall also be included, but need not be certified to by an independent certified public accountant.

(11) A summary of a report of an actuary, updated at least every five years, that estimates the capacity of the provider to meet its contractual obligation to the residents. Disclosure statements of continuing care facilities established prior to January 1, 1988, do not need an actuarial report or summary until January 1, 1993.

(12) For proposed or development stage facilities, a statement of the anticipated sources and uses of funds, including but not limited to:

a. An estimate of the cost of the acquisition of the facility or, if the facility is to be constructed, an estimate of the cost of the acquisition of the land and construction cost of the facility;

b. An estimate of the marketing and resident acquisition costs to be incurred prior to commencement of operations;

c. An estimate of related costs such as financing fees, legal expenses, feasibility study fees and any other development costs which the provider anticipates to incur or become obligated for prior to the commencement of operations;

d. A description of any equity capital to be received by the facility;

e. A description of any long-term financing for the purchase or construction of the facility;

f. An estimate of the total life occupancy fees to be received from or on behalf of, residents at, or prior to, commencement of operations;

g. A description of any other funding sources which the provider anticipates using to fund any start-up losses or to provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care; and

h. Note disclosure detailing all significant assumptions used in the preparation of the statement of sources and uses of funds, including but not limited to: information regarding the requirements for the refund of residents life occupancy fees, if any, as required in the contracts for continuing care; a description of the provider's anticipated accounting method used in the recognition of revenue from life occupancy fees; all pertinent details of long-term financing to include interest rate, repayment terms, and, if applicable, loan covenants; and all pertinent details regarding the financing costs and repayment terms of other financing sources.

(13) Forecast statements of revenues and expenses and cash flows for the facility for each of the next five fiscal years, including but not limited to:

a. Detail of revenues and support to include the following categories as a minimum: members' residency charges, amortization of life occupancy fees, guests' meals and lodging, health center routine services, health center special services, health center adjustments and allowances, investment income, contributions for restricted projects and gifts and bequests;

b. Detail of operating expenses to include the following categories as a minimum: health center, dietary, housekeeping, maintenance, administration, development and marketing, depreciation, and interest; and

c. Note disclosure detailing all significant assumptions used in the preparation of the statements of revenues and expenses and cash flows, including but not limited to: information regarding the requirements for the refund of residents' life occupancy fees, if any, as

required in the contracts for continuing care; a description of the provider's accounting method used in the recognition of revenue from life occupancy fees; a schedule of residency charges anticipated to be charged, including estimated occupancy percentages and the effect, if any, of government subsidies for health care services to be provided pursuant to the contracts for continuing care; all pertinent details of long-term financing, to include interest rate, repayment terms, and, if applicable, loan covenants; an estimate of any reserves that might be required for the replacement of equipment or furnishings or anticipated major structural repairs or additions; and all pertinent details regarding the financing costs and repayment terms of other financing sources.

(14) The estimated number of residents of the facility to be provided services by the provider pursuant to the contract for continuing care.

(15) Any other material information concerning the facility or the provider which, if omitted, would lead a reasonable person not to enter into this contract.

(b) The cover page of the disclosure statement shall state, in a prominent location and in boldface type, the date of the disclosure statement, the last date through which that disclosure statement may be delivered if not earlier revised, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this Article but that the disclosure statement has not been reviewed or approved by any government agency or representative to ensure accuracy or completeness of the information set out.

(c) A copy of the standard form of contract for continuing care used by the provider shall be attached to each disclosure statement.

(d) The Commissioner, by rules adopted by him under this Article, may prescribe a standardized format for the disclosure statement required by this section.

"*§ 58-770. Contract for continuing care; specifications.*

(a) Each contract for continuing care shall provide that:

(1) The party contracting with the provider may rescind the contract within 30 days following the later of the execution of the contract or the receipt of a disclosure statement that meets the requirements of this section, in which event any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the

resident, shall be returned in full, and the resident to whom the contract pertains is not required to move into the facility before the expiration of the 30-day period; and

(2) If a resident dies before occupying a living unit in the facility, or if, on account of illness, injury, or incapacity, a resident would be precluded from occupying a living unit in the facility under the terms of the contract for continuing care, the contract is automatically canceled and the resident or legal representative of the resident shall receive a refund of all money or property transferred to the provider, less (i) those nonstandard costs specifically incurred by the provider or facility at the request of the resident and described in the contract or an addendum thereto signed by the resident, and (ii) a reasonable service charge, if set out in the contract, not to exceed the greater of one thousand dollars ($1,000) or two percent (2%) of the entrance fee.

(b) Each contract shall include provisions that specify the following:

(1) The total consideration to be paid;

(2) Services to be provided;

(3) The procedures the provider shall follow to change the resident's accommodation if necessary for the protection of the health or safety of the resident or the general and economic welfare of the residents;

(4) The policies to be implemented if the resident cannot pay the periodic fees;

(5) The terms governing the refund of any portion of the entrance fee in the event of discharge by the provider or cancellation by the resident;

(6) The policy regarding increasing the periodic fees;

(7) The description of the living quarters;

(8) Any religious or charitable affiliations of the provider and the extent, if any, to which the affiliate organization will be responsible for the financial and contractual obligations of the provider;

(9) Any property rights of the resident;

(10) The policy, if any, regarding fee adjustments if the resident is voluntarily absent from the facility; and

(11) Any requirement, if any, that the resident apply for Medicaid, public assistance, or any public benefit program.

"§ 58-771. *Annual disclosure statement revision.*

(a) Within 150 days following the end of each fiscal year, the provider shall file with the Commissioner a revised disclosure statement setting forth current information required pursuant to G.S.

58-769. The provider shall also make this revised disclosure statement available to all the residents of the facility. This revised disclosure statement shall include a narrative describing any material differences between (i) the forecast statements of revenues and expenses and cash flows or other forecast financial data filed pursuant to G.S. 58-769 as a part of the disclosure statement recorded most immediately subsequent to the start of the provider's most recently completed fiscal year and (ii) the actual results of operations during that fiscal year, together with the revised forecast statements of revenues and expenses and cash flows or other forecast financial data being filed as a part of the revised disclosure statement. A provider may also revise its disclosure statement and have the revised disclosure statement recorded at any other time if, in the opinion of the provider, revision is necessary to prevent an otherwise current disclosure statement from containing a material misstatement of fact or omitting a material fact required to be stated therein. Only the most recently recorded disclosure statement, with respect to a facility, and in any event, only a disclosure statement dated within one year plus 150 days prior to the date of delivery, shall be considered current for purposes of this Article or delivered pursuant to G.S. 58-769.

(b) The annual disclosure statement required to be filed with the Commissioner under this section shall be accompanied by an annual filing fee of one hundred dollars ($100.00).

"§ 58-772. *Escrow, collection of deposits.*

(a) A provider shall establish an escrow account with (i) a bank, (ii) a trust company, or (iii) another person or entity agreed upon by the provider and the resident. The terms of this escrow account shall provide that the total amount of any entrance fee received by the provider prior to the date the resident is permitted to occupy a living unit in the facility be placed in this escrow account. These funds may be released only as follows:

(1) If the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider when the living unit becomes available for occupancy by the new resident;

(2) If the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be released to the provider when the escrow agent is satisfied that:

a. Construction or purchase of the living unit has been completed and an occupancy permit, if applicable, covering the living unit has been issued by the local government having authority to issue such permits;

b. A commitment has been received by the provider for any permanent mortgage loan or other long-term financing, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and

c. Aggregate entrance fees received or receivable by the provider pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment are equal to not less than ninety percent (90%) of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less than ninety percent (90%) of the funds estimated in the statement of anticipated source and application of funds submitted by the provider as that part of the disclosure statement required by G.S. 58-769, to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care retirement community contracts.

(b) Upon receipt by the escrow agent of a request by the provider for the release of these escrow funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of subsection (a) of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

(c) If the provider fails to meet the requirements for release of funds held in this escrow account within a time period the escrow agent considers reasonable, these funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

(d) An entrance fee held in escrow may be returned by the escrow agent to the person who made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that this person is entitled to a refund of the entrance fee.

"*§ 58-773. Right to organization.*

(a) A resident living in a facility registered under this Article has the right of self-organization, the right to be represented by an individual of his own choosing, and the right to engage in concerted activities to keep informed on the operation of the facility in which he is a resident or for other mutual aid or protection.

(b) The board of directors or other governing body of a continuing care facility or its designated representative shall hold annual meetings with the residents of the continuing care facility for free discussions of subjects including, but not limited to, income, expenditures, and financial trends and problems as they apply to the facility and discussions of proposed changes in policies, programs, and services. Residents shall be entitled to at least seven days advance notice of each meeting. An agenda and any materials that will be distributed by the governing body at the meetings shall remain available upon request to residents.

"*§ 58-774. Rehabilitation or liquidation.*

(a) If, at any time, the Commissioner determines, after notice and an opportunity for the provider to be heard, that:

(1) A portion of an entrance fee escrow account required to be maintained under this Article has been or is proposed to be released in violation of this Article;

(2) A provider has been or will be unable, in such a manner as may endanger the ability of the provider, to fully perform its obligations pursuant to contracts for continuing care, to meet the projected financial data previously filed by the provider;

(3) A provider has failed to maintain the escrow account required under this Article; or

(4) A facility is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent;

the Commissioner may apply to the Superior Court of Wake County or to the federal bankruptcy court that may have previously taken jurisdiction over the provider or facility for an order directing the Commissioner or authorizing the Commissioner to appoint a trustee to rehabilitate or to liquidate a facility.

(b) An order to rehabilitate a facility shall direct the Commissioner or trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of such managers or agents as the Commissioner or trustee may deem necessary and to take such steps as the Court may direct toward removal of the causes and conditions which have made rehabilitation necessary.

(c) If, at any time, the Court finds, upon petition of the Commissioner, trustee or provider, or on its own motion, that the objectives of an order to rehabilitate a facility have been accomplished and that the facility can be returned to the provider's management without further jeopardy to the residents of the facility, the Court may, upon a full report and accounting of the conduct of the facility's affairs during the rehabilitation and of the facility's current financial

condition, terminate the rehabilitation and, by order, return the facility and its assets and affairs to the provider's management.

(d) If, at any time, the Commissioner determines that further efforts to rehabilitate the provider would be useless, the Commissioner may apply to the Court for an order of liquidation.

(e) An order to liquidate a facility:

(1) May be issued upon application of the Commissioner whether or not there has been issued a prior order to rehabilitate the facility.

(2) Shall act as a revocation of the license of the facility under this Article.

(3) Shall include an order directing the Commissioner or a trustee to marshal and liquidate all of the provider's assets located within this State.

(f) In applying for an order to rehabilitate or liquidate a facility, the Commissioner shall give due consideration in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served.

(g) An order for rehabilitation under this section shall be refused or vacated if the provider posts a bond, by a recognized surety authorized to do business in this State and executed in favor of the Commissioner on behalf of persons who may be found entitled to a refund of entrance fees from the provider or other damages in the event the provider is unable to fulfill its contracts to provide continuing care at the facility, in an amount determined by the Court to be equal to the reserve funding that would otherwise need to be available to fulfill such obligations.

"§ 58-775. *Investigations and subpoenas.*

(a) The Commissioner may make such public or private investigations within or outside of this State as necessary (i) to determine whether any person has violated or is about to violate any provision of this Article, (ii) to aid in the enforcement of this Article, or (iii) to verify statements contained in any disclosure statement filed or delivered under this Article.

(b) For the purpose of any investigation or proceeding under this Article, the Commissioner may require or permit any person to file a statement in writing, under oath or otherwise, as to any of the facts and circumstances concerning the matter to be investigated.

(c) For the purpose of any investigation or proceeding under this Article, the Commissioner or his designee has all the powers given to him for insurance companies. He may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or

records deemed relevant or material to the inquiry, all of which may be enforced in the Superior Court of Wake County.

"§ 58-776. *Examinations; financial statements.*

The Commissioner or his designee may, in the Commissioner's discretion, visit a facility offering continuing care in this State to examine its books and records. Expenses incurred by the Commissioner in conducting examinations under this section shall be paid by the facility examined. The provisions of G.S. 58-16, 58-16.1, 58-16.2, 58-18, 58-21, 58-22, 58-25, 58-25.1, and 58-63 apply to this Article and are hereby incorporated by reference.

"§ 58-777. *Agreements as preferred claims on liquidation.*

In the event of liquidation of a provider, all continuing care agreements executed by the provider shall be deemed preferred claims against all assets owned by the provider; provided, however, such claims shall be subordinate to any secured claim.

"§ 58-778. *Rule-making authority; reasonable time to comply with rules.*

(a) The Commissioner is authorized to promulgate rules to carry out and enforce the provisions of this Article.

(b) Any provider who is offering continuing care may be given a reasonable time, not to exceed one year from the date of publication of any applicable rules promulgated pursuant to this Article, within which to comply with the rules and to obtain a license.

"§ 58-779. *Civil liability.*

(a) A provider who enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of G.S. 58-769 to the person contracting for this continuing care, or enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement that omits to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, shall be liable to the person contracting for this continuing care for actual damages and repayment of all fees paid to the provider, facility, or person violating this Article, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement, or omission or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest thereon at the legal rate for judgments, and court costs and reasonable attorney fees.

(b) Liability under this section exists regardless of whether the provider or person liable had actual knowledge of the misstatement or omission.

(c) A person may not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid the provider, facility, or person violating this Article together with interest at the rate established monthly by the Commissioner of Banks pursuant to G.S. 24-1.1(3), less the current contractual value of care and lodging provided prior to receipt of the offer, and if the offer recited the provisions of this section and the recipient of the offer failed to accept it within 30 days of actual receipt.

(d) An action may not be maintained to enforce a liability created under this Article unless brought before the expiration of three years after the execution of the contract for continuing care that gave rise to the violation.

"§ 58-780. *Criminal penalties.*

Any person who willfully and knowingly violates any provision of this Article is guilty of a misdemeanor and shall, upon conviction, be fined not more than ten thousand dollars ($10,000) or imprisoned not more than one year, or both. The Commissioner may refer such evidence as is available concerning violation of the Article or of any rule or order hereunder to the Attorney General or a district attorney who may, with or without such reference institute the appropriate criminal proceedings under this Article. Nothing in this Article limits the power of the State to punish any person for any conduct that constitutes a crime under any other statute.

"§ 58-781. *Advisory Committee.*

There shall be a nine member Continuing Care Advisory Committee appointed by the Commissioner. The Committee shall consist of at least two residents of continuing care communities, two representatives of the North Carolina Association of Nonprofit Homes for the Aging, one individual who is a certified public accountant and is licensed to practice in this State, one individual skilled in the field of architecture or engineering, and one individual who is a health care professional."

Sec. 2. Article 12 of Chapter 131E of the General Statutes is repealed.

Sec. 3. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. This act shall not become effective unless monies necessary to implement this act are appropriated.

Sec. 4. In the event any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 5. Nothing in this Article shall be construed to affect the authority of the Department of Human Resources otherwise provided by law to license or regulate any health service facility of domiciliary service facility.

Sec. 6. Section 3 of this act and this section are effective upon ratification. The remaining sections of this act shall become effective January 1, 1990.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

S.B. 605 **CHAPTER 759**

AN ACT TO AMEND THE LAWS CONCERNING THE PRIVATE PROTECTIVE SERVICES BOARD AND THE PRIVATE PROTECTIVE SERVICES RECOVERY FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74C-1 reads as rewritten:

"*§ 74C-1. Title.*

This Chapter may be cited as the Private Protective Services Act. The purpose of this act is to increase the level of integrity, competency, and performance of Private Protective Service Professions in order to safeguard the public health, safety, and welfare."

Sec. 2. G.S. 74C-2 reads as rewritten:

"*§ 74C-2. Licenses required.*

(a) No private person, firm, association, or corporation shall engage in, perform any services as, or in any way represent or hold itself out as engaging in a private protective ~~service~~ services ~~business~~ profession or activity in this State without having first complied with the provisions of this Chapter. Compliance with the licensing requirements of this Chapter shall not relieve any person, firm, association or corporation from compliance with any other licensing law.

(b) An individual in possession of a valid private protective services license or private detective trainee permit issued prior to ~~July 1, 1973~~ October 1, 1989, shall not be subject to forfeiture of such license by virtue of this Chapter. Such license shall, however, remain subject to suspension, denial, or revocation in the same manner in which all other licenses issued pursuant to this Chapter are subject to suspension, denial, or revocation.

(c) In its discretion, the Private Protective Services Board may issue a trainee permit in lieu of a private investigator license provided that the applicant works under the direct supervision of a licensee."

Sec. 3. G.S. 74C-3 reads as rewritten:

"§ *74C-3. Private protective services ~~business~~ profession defined.*

(a) As used in this Chapter, the term 'private protective services ~~business~~ profession' means and includes the following:

(1) 'Armored car ~~business~~ profession' means any person, firm, association, or corporation which provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, checks, documents, stocks, bonds, jewelry, paintings, and other valuables for a fee or other valuable consideration. ~~This definition does not include a person employed regularly and exclusively as an employee by one employer in connection with the business affairs of such employer.~~ This definition does not include a person operating an armored car business pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such business; however, armed armored car service guards shall be subject to the provisions of G.S. 74C-13.

(2) Repealed by Session Laws 1983, c. 786, s. 2, effective January 1, 1984.

(3) 'Counterintelligence service ~~business~~ profession' means any person, firm, association, or corporation which discovers, locates, or disengages by electronic, electrical, or mechanical means any listening or other monitoring equipment surreptitiously placed to gather information concerning any individual, firm, association, or corporation for a fee or other valuable consideration. ~~This definition does not include a person employed regularly and exclusively as an employee by one employer in connection with the business affairs of such employer.~~

(4) 'Courier service ~~business~~ profession' means any person, firm, association, or corporation which transports or offers to transport from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or other small items of value which require expeditious service for a fee or other valuable consideration. ~~This definition does not include a person employed regularly and exclusively as an employee by one employer in connection with the business affairs of such employer.~~ This definition does not include a person operating a courier service ~~business~~ pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such ~~business;~~ service; however,

armed courier service guards shall be subject to the provisions of G.S. 74C-13.

(5) 'Detection of deception examiner' means any person, firm, association, or corporation which uses any device or instrument, regardless of its name or design, for the purpose of the detection of deception or any person who reviews the work product of an examiner including charts, tapes or other methods of record keeping for the purpose of detecting deception or determining accuracy.

(6) 'Security guard and patrol ~~business~~ profession' means any person, firm, association, or corporation ~~engaging in the business of providing a private watchman, guard, or street patrol service~~ that provides a security guard on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performing one or more of the following functions:

a. Prevention ~~and/or~~ or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;

b. Prevention, observation, or detection of any unauthorized activity on private property; ~~and~~

c. Protection of patrons and persons lawfully authorized to be on the premises of the person, firm, association, or corporation ~~for whom he contractually obligated to provide~~ that entered into the contract for security services; ~~and~~ or

d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.

~~This definition does not include a person employed regularly and exclusively as an employee by an employer in connection with the business affairs of such employer, except that if the employee is an armed private security officer and wears, carries, or possesses a firearm in the performance of his duties, the provisions of G.S. 74C-13 shall apply; provided, however, that nothing in this Chapter shall be construed to prohibit a law-enforcement officer from being employed during his off-duty hours by a licensed security guard and patrol company on an employer-employee basis; provided further, that the police officer shall not wear his police officer's uniform or use police equipment while working for a security guard and~~

~~patrol company. This definition does not include a law-enforcement officer who provides security guard and patrol services on an individual employer-employee basis to a person, firm, association, or corporation which is not engaged in a security guard and patrol business.~~

(7) 'Guard-dog service ~~business~~ profession' means any person, firm, association, or corporation which contracts with another person, firm, association, or corporation to place, lease, rent, or sell a trained dog for the purpose of protecting lives or property for a fee or other valuable consideration. ~~This definition does not include a person employed regularly and exclusively as an employee by one employer in connection with the business affairs of such employer.~~

(8) 'Private detective' or 'private investigator' are synonymous and ~~means~~ mean any person who engages in the ~~business~~ profession of or accepts employment to furnish, agrees to make, or makes ~~an~~ inquiries or investigations concerning the below-listed topics on a contractual basis ~~investigation for the purpose of obtaining information with reference to~~:

a. ~~Crime~~ Crimes or wrongs done or threatened against the United States or any state or territory of the United States;

b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

c. The location, disposition, or recovery of lost or stolen property;

d. The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to ~~properties.~~ properties; ~~provided that scientific research laboratories and consultants shall not be included in this definition;~~

e. Securing evidence to be used before any court, board, officer, or ~~investigation~~ investigative committee; or

f. Protection of individuals from serious bodily harm or death.

~~However, the employee of a security department of a private business which conducts investigations exclusively on matters internal to the business affairs of the business shall not be required to be licensed as a private detective or investigator under this Chapter.~~

(9) 'Special limited guard and patrol profession' means any person who is licensed under Chapter 74D of the General Statutes of North Carolina and provides armed alarm responders pursuant to G.S. 74C-13. Applicants for this limited license shall not be required to meet the experience requirements for a security guard and patrol license. Any experience gained under this limited license shall not be counted as experience for a security guard and patrol license.

(b) 'Private protective services' shall not mean:

(1) ~~Insurance~~ Licensed insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment or claims against an insurance company;

(2) An officer or employee of the United States, this State, or any political subdivision of either while such officer or employee is engaged in the performance of his official duties within the course and scope of his employment with the United States, this State, or any political subdivision of either;

(3) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating or credit worthiness of persons; and a person who provides consumer reports in connection with:

a. Credit transactions involving the consumer on whom the information is to be furnished and involving the extensions of credit to the consumer,

b. Information for employment purposes,

c. Information for the underwriting of insurance involving the consumer,

d. Information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility, or

e. A legitimate business need for the information in connection with a business transaction involving the consumer;

(4) An attorney at law licensed to practice in North Carolina while engaged in such practice and his agent, provided said agent is performing duties only in connection with his ~~master's~~ principal's practice of law;

(5) The legal owner or lien holder, and his agents and employees, of personal property which has been sold in a

transaction wherein a security interest in personal property has been created to secure the sales transaction, who engage in repossession of said personal property;

~~(6) Company police or railroad police as defined in Chapter 74A of the General Statutes of North Carolina;~~

(7) Repealed by Session Laws 1981, c. 807, s. 1;

(8) Employees of a licensee who are employed exclusively as undercover agents; provided that for purposes of this section, undercover agent means an individual hired by another person, firm, association, or corporation to perform a job ~~in and/or~~ for that person, firm, association, or corporation and, while performing such job, to act as an undercover operative, employee, or independent contractor of a licensee, but under the supervision of a licensee;

(9) A person who is engaged in an alarm systems business subject to the provisions of Chapter 74D of the General ~~Statutes of North Carolina;~~ Statutes;

(10) A person who obtains or verifies information regarding applicants for employment, with the knowledge and consent of the applicant, and is (i) engaged in business as a private personnel service as defined in G.S. 95-47.1 or engaged in business as a private employer fee pay personnel service, (ii) engaged in the business of obtaining or verifying information regarding applicants for employment, or (iii) an employer with whom the applicant has applied for employment;

(11) A person who ~~is engaged in the business of providing efficiency studies to employers regarding services to consumers,~~ conducts efficiency studies. An efficiency study is an analysis of an employer's business, made at the request of the employer, to determine one or more of the following:

a. The most efficient procedures by which an employee of the business can perform the employee's assigned duties.

b. The adequacy of an employee's performance of the employee's assigned duties that require interaction with a client or customer of the business.

If a person making an efficiency study observes an instance of theft or another illegal act committed by an employee of the business, the person may report the instance to the employer without violating G.S. 74C-3(a)(8).

(12) ~~A consultant~~ Research laboratories and consultants who ~~analyzes, tests,~~ analyze, test, or in any way ~~applies~~ apply

~~his~~ their expertise to interpreting, evaluating, or analyzing facts or evidence submitted by another in order to determine the cause or effect of physical or psychological occurrences, and ~~furnishes his opinion~~ give their opinions and findings to the requesting source or to a designee of the requestor.

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. If the employee is an armed security guard and wears, carries, or possesses a firearm in the performance of his duties, the provisions of G.S. 74C-13 apply.

(14) An employee of a security department of a private business that conducts investigations exclusively on matters internal to the business affairs of the business."

Sec. 4. G.S. 74C-4(a) and (g) read as rewritten:

"(a) The Private Protective Services Board is hereby established in the Department of Justice to administer the licensing and set educational and training requirements for persons, firms, associations, and corporations engaged in ~~the~~ a private protective services ~~businesses~~ profession within this State.

(g) All decisions heretofore made by the Private Protective Services Board, established pursuant to Chapter 74B, shall remain in full force and effect unless and until repealed or suspended by action of the Private Protective Services Board established herein. ~~All rules and regulations heretofore adopted pursuant to the provisions of Chapter 150A of the General Statutes by the Private Protective Services Board, established pursuant to Chapter 74B, shall remain in full force and effect until, but not later than January 1, 1980, or until repealed or suspended by action of the Private Protective Services Board established herein.~~"

Sec. 5. G.S. 74C-5 reads as rewritten:

"*§ 74C-5. Powers of the Board.*

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Approve individual applicants to be licensed or registered according to this Chapter;

(6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any ~~applicant or licensee~~ applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter ~~and/or~~ or the rules established by the Board. The denial, suspension, or revocation ~~of such license~~ shall be in accordance with Chapter ~~150A~~ 150B of the General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. ~~5A-21 et seq.~~ 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court; and

(8) ~~The chairman of the Board or his representative designated to be a hearing officer may conduct any hearing called by the Board for the purpose of denial, suspension, or revocation of a license or trainee permit under this Chapter; and~~

(9) Establish rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of such schools."

Sec. 6. G.S. 74C-8 reads as rewritten:

"§ *74C-8. Applications for an issuance of license.*

(a) Any person, firm, association, or corporation desiring to carry on or engage in a the private protective services ~~business~~ profession in this State ~~of a kind defined in G.S. 74C-3~~ shall make a verified application in writing to the Board.

(b) The application shall include:

(1) Full ~~name~~ name, home address, post office box, and the actual street address of the business ~~address~~ of the applicant;

(2) The name under which the applicant intends to do business;

(3) A statement as to the general nature of the business in which the applicant intends to engage;

(4) The full name and address of any partners in the business and the principal officers, directors and business manager, if any;

(5) The names of not less than three unrelated and disinterested persons as references of whom inquiry can be made as to the character, standing, and reputation of the persons making the application;

(6) Such other information, evidence, statements, or documents as may be required by the Board; and

(7) Accompanying trainee permit applications only, a notarized statement signed by the applicant and his employer stating that the trainee applicant will at all times work with and under the direct supervision of a licensed private detective.

(c) (1) A business entity other than a sole proprietorship shall not do business under this Chapter unless the business entity has in its employ a designated resident qualifying agent who meets the requirements for a license issued under this Chapter and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board. Provided however, that this approval shall not be given unless the ~~licensee signs a statement agreeing to waive jurisdiction or unless the licensee agrees to appoint a resident agent for service of process by the Board.~~ business entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice, or demand required by or permitted to be served upon the business entity by the Private Protective Services Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a business entity in any other manner now or hereafter permitted by law.

(2) For the purposes of the Chapter a qualifying agent means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the Administrator.

(3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the Administrator within 10 working days.

The business entity must obtain a substitute qualifying agent within 30 days after the original qualifying agent ceases to serve as qualifying agent unless the Board, in its discretion, extends this period, for good cause, for a period of time not to exceed three months.

(4) The certificate authorizing the business entity to engage in a private protective ~~service business~~ services profession shall list the name of at least one designated qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without prior approval of the Administrator, subject to the approval of the Board.

(d) Upon receipt of an application, the Board shall ~~cause~~ conduct a background investigation ~~to be made~~ during the course of which the applicant shall be required to show that he meets all the following requirements and qualifications hereby made prerequisite to obtaining a license:

(1) That he is at least 18 years of age;

(2) That he is of good moral character and temperate habits. The following shall be *prima facie* evidence that the applicant does not have good moral character or temperate habits: conviction by any local, State, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic ~~beverages;~~ beverage; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking ~~and/or~~ or entering, burglary, larceny, or any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this subsection, 'conviction' means and includes the entry of a plea of guilty or no contest or a verdict rendered in open court by a judge ~~and/or~~ or jury;

~~(3) For a private detective license, that he has had at least three years experience within the past five years in private investigative work, or in an investigative capacity as a member of any federal law enforcement agency, any State law enforcement agency, any municipal law enforcement department, or any county law enforcement or sheriff's department. The Board may provide by rule that post-secondary education is experience under the preceding sentence. Time spent teaching police science subjects at a post-secondary educational institution (such as a~~

~~community college, college or university) shall toll the time for the minimum year requirements in the preceding two sentences. After administrative remedies have been exhausted, disputes with the Board arising under G.S. 74C-8(d)(3) may be carried directly to the General Court of Justice in the county where the complainant resides.~~

(4) That he has the necessary training, qualifications, ~~and/or~~ and experience in order to determine the applicant's competency and fitness as the Board may determine by rule for all licenses to be issued by the Board.

(e) The Board may require the applicant to demonstrate his qualifications by oral or written examination or by successful completion of a Board-approved training program, or ~~both~~ all three.

(f) Upon a finding that the application is in proper form, the completion of the background investigation, and the completion of an examination required by the Board, the Administrator shall submit to the Board the application and his recommendations. The Board shall determine whether to approve or deny the application for a license. Upon approval by the Board, a license will be issued to the applicant upon payment by the applicant of the initial license fee and the required contribution to the Private Protective Services Recovery Fund, and certificate of liability insurance. ~~The grounds for the denial of a license include:~~

~~(1) Commission of some act which if committed by a licensee, would be grounds for the suspension or revocation of a license under this Chapter;~~

~~(2) Conviction of a crime involving fraud;~~

~~(3) Lack of good moral character or temperate habits. The following shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, State, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverages; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking and/or entering, burglary, larceny; any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this subsection, "conviction" means and includes the entry of a plea of guilty or a verdict rendered in open court by a judge and/or jury;~~

~~(4) Previous denial of a license under this Chapter or previous revocation of a license for cause;~~

~~(5) Knowingly making any false statement or misrepresentation in his application.~~"

Sec. 7. G.S. 74C-9 reads as rewritten:

"*§ 74C-9. Form of license; term; renewal; posting; branch offices; not assignable; late renewal fee.*

(a) The license when issued shall be in such form as may be determined by the Board and shall state:

(1) The name of the licensee,

(2) The name under which the licensee is to operate, and

(3) The number and expiration date of the license.

(b) The license shall be issued for a term of one year. A trainee permit shall be issued for a term of one year. All licenses must be renewed prior to the expiration of the term of the license. Following issuance, the license shall at all times be posted in a conspicuous place in the licensee's principal place of ~~business~~ business, in North Carolina, unless for good cause exempted by the Administrator ~~of the licensee~~. A license issued under this Chapter is not assignable.

~~(c) No licensee shall conduct a private protective services business under a name other than the name under which his license was obtained under the provisions of this Chapter or the name of the business entity under which the licensee is doing business and which name and address of such business entity has been registered with the Administrator.~~

(d) The operator or manager of any branch office shall be properly licensed or registered. The license shall be posted at all times in a conspicuous place in the branch office. This license shall be issued for a term of one year. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices, if any, within 10 working days after the establishment, closing, or changing of the location of any branch office. The Administrator may, upon the successful completion of an investigation of the application, issue a temporary branch office license pending approval of the application by the Board.

(e) The Board is authorized to charge reasonable application and license fees as follows:

(1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars ($150.00);

(2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars ($250.00);

(3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars ($250.00);

(4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars ($50.00);

(5) A late renewal fee to be paid in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the license has not been renewed on or before the expiration date of the licensee;

(6) A new, renewal, replacement or reissuance fee for ~~a~~ an unarmed registration identification card in an amount not to exceed thirty dollars ($30.00);

(7) An application fee for an armed ~~private security officer~~ security guard firearm registration permit not to exceed fifty dollars ($50.00);

(8) A new, renewal, replacement, or reissuance fee for an armed ~~private security officer~~ security guard firearm registration permit not to exceed thirty dollars ($30.00);

(9) An application fee for certification as a ~~firearms~~ certified trainer not to exceed fifty dollars ($50.00);

(10) A renewal or replacement fee for ~~firearms~~ certified trainer certification not to exceed twenty-five dollars ($25.00);

(11) A new nonresident temporary permit fee not to exceed one hundred dollars ($100.00);

(12) An unarmed ~~guard~~ registration transfer fee ~~is~~ not to exceed fifteen dollars ($15.00);

(13) A branch office license fee not to exceed fifty dollars ($50.00)~~.~~; and

(14) A special limited guard and patrol license fee not to exceed one hundred dollars ($100.00).

Except as provided in G.S. 74C-13(k), ~~All~~ all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter. ~~All fees collected pursuant to G.S. 74B-11 which have not been expended upon the effective date of this Chapter shall be transferred to the Board established by this Chapter to be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter.~~

(f) A license or trainee permit granted under the provisions of this Chapter may be renewed by the Private Protective Services Board upon notification by the licensee or permit holder to the Administrator of intended ~~renewal and~~ renewal, the payment of the proper ~~fee.~~ fee, and evidence of a policy of liability insurance as prescribed in G.S. 74C-10(e).

The renewal shall be finalized before the expiration date of the license. In no event will renewal be granted more than three months after the date of expiration of a license or trainee permit.

(g) Upon notification of approval of his application by the Board, an applicant must furnish evidence that he has obtained the necessary ~~bond and~~ liability insurance required by G.S. 74C-10 and obtain the license applied for or his application shall lapse.

(h) Trainee permits shall not be issued to applicants ~~that satisfy the experience requirement in G.S. 74C-8(d)(3)~~ that qualify for a private detective license. A licensed private detective may supervise no more than five trainees at any given time."

Sec. 8. G.S. 74C-10 reads as rewritten:

"*§ 74C-10. Certificate of liability insurance required: form and approval: suspension for noncompliance.*

(a) to (d) Repealed by Session Laws 1983, c. 673, s. 4, effective July 1, 1983.

(e) No license shall be issued under this Chapter unless the applicant files with the Board evidence of a policy of liability ~~insurance which~~ insurance. The policy must provide for the following minimum coverage: fifty thousand dollars ($50,000) because of bodily injury or death of one person as a result of the negligent act or acts of the principal insured or his agents operating in the course and scope of his employment; subject to said limit for one person, one hundred thousand dollars ($100,000) because of bodily ~~injury~~ injury or death of two or more persons as a result of the negligent act or acts of the principal insured or his agents operating in the course and scope of his or her agency; twenty thousand dollars ($20,000) because of injury to or destruction of property of others as a result of the negligent act or acts of the principal insured or his agents operating in the course and scope of his or her agency.

(f) An insurance carrier shall have the right to cancel such policy of liability insurance upon giving a 30-day notice to the Board. Provided, however, that such cancellation shall not affect any liability on the policy which accrued prior thereto. The policy of liability shall be approved by the Board as to form, execution, and terms thereon.

(g) The holder of ~~a private detective~~ any trainee permit and persons registered pursuant to G.S. 74C-11 shall not be required to obtain a certificate of liability insurance.

(h) Every licensee shall at all times maintain on file with the Board the certificate of insurance required by this Chapter in full force and effect and upon failure to do so, the license of such licensee shall be automatically suspended and shall not be reinstated until an application therefor, in the form prescribed by the Board, is filed together with a proper insurance certificate.

No cancellation or refusal to renew by an insurer of a licensee under this Chapter shall be effective unless the insurer has given the insured licensee notice of the cancellation or refusal to renew. Upon termination of insurance coverage for said licensee, the insurer shall give notice to the Administrator of the Board.

(i) The Board may deny the application notwithstanding the applicant's compliance with this section:

(1) For any reason which would justify refusal to issue or a suspension or revocation of a license; or

(2) ~~For the performance by applicant of any practice while under suspension for failure to keep this insurance certificate in force, for which a license under this Chapter is required.~~ Because the applicant engaged in a private protective services profession while the applicant's license was suspended for failure to keep the required liability insurance policy in force."

Sec. 9. G.S. 74C-11 reads as rewritten:

"§ *74C-11. ~~Registration of persons employed; temporary employment.~~ Registration of permanent and temporary employees; unarmed security guard required to have registration card.*

(a) All ~~licensees,~~ licensees shall register their employees ~~within 20 days of the beginning of employment of an employee~~ who will be engaged in ~~the~~ providing ~~of~~ private protective services with the Board within 20 days after the employment begins, unless the Administrator, in his discretion, extends the time period, for good ~~cause, shall furnish the Board with the following:~~ cause. To register an employee, a licensee must give the Board the following:

(1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and

(2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months.

(b) A security guard and patrol company may not employ ~~a guard, watchman, or other patrol personnel~~ an unarmed security guard unless the ~~guard, watchman, or patrol personnel~~ guard has a registration card issued under subsection (d) of this section. ~~is properly registered in compliance with this section, unless otherwise exempted by another provision of this Chapter.~~ A person engaged in a private protective services profession may not employ an armed security guard unless the guard has a firearm registration permit issued under G.S. 74C-13.

(c) The Administrator shall be notified in writing of the termination of any employee registered under ~~this Chapter~~ subsection (a) within 10 days after said termination.

(d) ~~A security guard, watchman, or patrol personnel~~ An unarmed security guard shall make application to the Administrator for ~~a~~ an unarmed registration card which the Administrator shall issue to said applicant after receipt of the information required to be submitted by his employer pursuant to subsection (a), and after meeting any additional requirements which the Board, in its discretion, deems to be necessary. The unarmed security guard registration card shall be in the form of a pocket card designed by the Board, shall be issued in the name of the applicant, and may have the applicant's photograph affixed thereto. The unarmed security guard registration card shall expire one year after its date of issuance and shall be renewed every year. If ~~a~~ an unarmed registered security guard is terminated by a licensee and changes employment to another security guard and patrol company, the security ~~guard~~ guard's registration card shall remain valid, provided the security guard pays the registration transfer fee ~~is paid~~ to the Board and a new unarmed security guard registration card is issued. An unarmed security guard whose transfer registration application and transfer fee have been sent to the Board may work with a copy of the transfer application until the registration card is issued.

(e) Notwithstanding the provisions of this section, a licensee may employ a person properly registered or licensed as an unarmed security guard in another state for a period not to exceed 10 days in any given month; provided ~~that such~~ the licensee, prior to employing ~~such~~ the unarmed security guard, submits to the Administrator the name, address, and social security number of ~~such~~ the unarmed ~~guard,~~ guard and the name of the state of current registration or licensing, and the Administrator approves the employment of the unarmed guard in this State.

(f) Notwithstanding the provisions of this section, a licensee may employ a person as an unarmed security guard for a period not to exceed 30 days in any given calendar year without registering that employee in accordance with this section; provided that the licensee submits to the Administrator a quarterly report, within 30 days after the end of the quarter in which the temporary employee worked, which provides the Administrator with the name, address, social security number, and dates of employment of such employee."

Sec. 10. G.S. 74C-12 reads as rewritten:

"*§ 74C-12. Denial, suspension, ~~Suspension~~ or revocation of ~~licenses; appeal,~~ license, registration, or permit.*

(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a ~~license or registration~~ license, registration, or permit issued under this Chapter if it is determined that the ~~licensee or registrant~~ applicant, licensee, registrant, or permit holder has:

(1) Made any false statement or given any false information in connection with any application for a ~~license or trainee permit or registration~~ license, registration, or permit or for the renewal or reinstatement of a ~~license or trainee permit or registration~~ license, registration, or permit;

(2) Violated any provision of this Chapter;

(3) Violated any rule promulgated by the Board pursuant to the authority contained in this Chapter;

~~(4) Been convicted of any crime involving moral turpitude or any other crime involving violence or the illegal use, carrying, or possession of a dangerous weapon;~~

(5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state;

(6) Engaged in or permitted any employee to engage in a private protective services ~~business~~ profession when not lawfully in possession of a valid license issued under the provisions of this Chapter;

(7) Willfully failed or refused to render to a client service ~~or a report~~ as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(8) Knowingly made any false report to the employer or client for whom information is being obtained;

(9) Committed an unlawful breaking or entering, assault, battery, or kidnapping;

(10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee;

~~(11) Committed any other act which is a ground for the denial of an application for a license under this Chapter;~~

(12) Undertaken to give legal advice or counsel or to in any way falsely represent that he is representing any attorney or he is appearing or will appear as an attorney in any legal proceeding;

(13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person or persons to believe that such simulation--written, printed, or typed--may be a

summons, warrant, writ or court process, or any pleading in any court proceeding;

(14) Failed to make the required contribution to the Private Protective Services Recovery Fund or failed to maintain the certificate of liability insurance required by this Chapter;

(15) Violated the firearm provisions set forth in this Chapter;

~~(16) Committed any act prohibited under G.S. 74C-16;~~

(17) Failed to notify the Administrator by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter;

(18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent;

(19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. ~~122-36(d)~~ 122C-3, by a court ~~having jurisdiction under Article 5A of Chapter 122 of the General Statutes.~~ under G.S. 122C-271;

(20) Failed or refused to offer a report to a client within 30 days of the client's written request;

(21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for cause;

(22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this Chapter;

(23) Divulged to any person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or his representative any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the client;

(24) Fraudulently held himself out as employed by or licensed by the State Bureau of Investigation or any other governmental authority;

(25) Intemperate habits or lacks good moral character. The acts that are *prima facie* evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are *prima facie* evidence of the same under this subdivision;

(26) Advertised or solicited business using a name other than that in which the license was issued;

(27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a private detective or private investigator while licensed under the provisions of this Chapter as a private investigator.

(b) The ~~revocation or suspension~~ denial, revocation, or suspension of a ~~license or registration~~ license, registration, or permit by the Board ~~as provided in subsection (a)~~ shall be in writing, be signed by the Administrator of the ~~Board stating~~ Board, and state the grounds upon which the Board decision is based. The aggrieved person shall have the right to appeal from this decision as provided in Chapter 150B of the General Statutes.

(c) The following persons may not be issued a license, registration, or permit under this Chapter:

(1) A sworn court official.

(2) A holder of a company police commission under Chapter 74A of the General Statutes."

Sec. 11. G.S. 74C-13 reads as rewritten:

"*§ 74C-13. ~~Firearms.~~ Armed security guard required to have firearm registration permit; security guard training.*

(a) It shall be unlawful for any person performing the duties of an armed ~~private security officer~~ security guard to carry a firearm in the performance of those duties without first having met the qualifications as set forth in this section and having been issued a firearm registration permit by the Board. For the purposes of this section, the following terms are defined:

(1) 'Armed ~~private security officer~~ security guard' means an individual employed by a contract security company or a proprietary security organization whose principal duty is that of an armed security ~~guard, patrol, or watchman~~ watchman; armed armored car service guard; armed alarm system company responder; private detective; or armed courier service guard who at any time wears, carries, or possesses a firearm in the performance of ~~his or her duties~~ duty.

(2) 'Contract security company' means any person, firm, association, or corporation engaging in a private protective services ~~business~~ profession ~~as defined in this Chapter which provides said~~ that provides services on a contractual basis for a fee or other valuable consideration to any other person, firm, association, or corporation.

(3) 'Proprietary security organization' means any person, firm, association, or corporation or department thereof which employs ~~watchmen, security guards or patrol personnel,~~

security guards, alarm responders, armored car personnel, or couriers who are employed regularly and exclusively as an employee by an employer in connection with the business affairs of such employer.

(b) It shall be unlawful for any person, firm, association, or corporation and its agents and employees to employ an armed ~~private security officer~~ security guard and knowingly authorize or permit him to carry a firearm during the course of performing his duties as an armed ~~private security officer~~ security guard if the Board has not issued him a firearm registration permit under this section or if the person, firm, association, or corporation permits an armed ~~private security officer~~ security guard to carry a firearm during the course of performing his duties whose firearm registration permit has been suspended, revoked, or has otherwise expired:

(1) ~~A firearms~~ An armed security guard firearm registration permit ~~will grant~~ grants authority to the armed security ~~officer,~~ guard, while in the performance of his duties or travelling directly to and from work, to carry a standard .38 caliber or .32 caliber revolver or any other firearm approved by the Board and not otherwise prohibited by law. The use of any firearm not approved by the Board is prohibited.

(2) All firearms carried by authorized armed security ~~officers~~ guards in the performance of their duties shall be owned or leased by the employer. Personally owned firearms shall not be carried by an armed security ~~officer~~ guard in the performance of his duties.

(c) The applicant for an armed ~~private~~ security ~~officer~~ guard firearm registration permit shall submit an application to the Board on a form provided by the Board.

(d) Each armed ~~private~~ security ~~officer~~ guard firearm registration permit issued under this section shall be in the form of a pocket card designed by the Board and shall identify the contract security company or proprietary security organization by whom the holder of the firearm registration permit is employed. An armed ~~private~~ security ~~officer~~ guard firearm registration permit expires one year after the date of its issuance and must be renewed annually unless the permit holder's employment terminates before the expiration of the permit.

(e) If the holder of an armed ~~private~~ security ~~officer~~ guard firearm registration permit terminates his employment with the contract security company or proprietary security organization, the firearm registration permit expires and must be returned to the Board within 15 working days of the date of termination of the employee.

(f) A contract security company or proprietary security organization shall be allowed to employ an individual for 30 days as an armed

~~private~~ security ~~officer~~ guard pending completion of the firearms training required by this Chapter, if the contract security company or proprietary security organization obtains prior approval from the Administrator. The Board and the Attorney General shall provide by rule the procedure by which a contract security company or a proprietary security organization applicant may be issued a temporary firearm registration permit by the Administrator of the Board pending a determination by the Board of whether to grant or deny an applicant a firearm registration permit.

(g) The Board may suspend, revoke, or deny ~~a~~ an armed security guard firearm registration permit if the holder or applicant has been convicted of any crime involving moral turpitude or any crime involving the illegal use, carrying, or possession of a deadly weapon or for violation of this section ~~and/or~~ or rules promulgated by the Board to implement this section. The Administrator may summarily suspend ~~a~~ an armed security guard firearm registration permit pending resolution of charges involving the illegal use, carrying, or possession of a firearm lodged against ~~an armed private security officer~~ the holder of the permit.

(h) The Board and the Attorney General shall establish a training program for armed security guards to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board and the Attorney General may approve training programs conducted by a contract security ~~companies~~ company and the security department of a proprietary security organization, if the contract security ~~companies~~ company or security department of a ~~propriety~~ proprietary security organization offers the courses listed in ~~subsection (1) of this paragraph (h)~~ subdivision (1) of this subsection and if the instructors of the training program are ~~qualified instructors~~ certified trainers approved by the Board and the Attorney General:

(1) The basic training course approved by the Board and the Attorney General shall consist of a minimum of four hours of classroom training which shall include:
   a. Legal limitations on the use of hand guns and on the powers and authority of an armed ~~private security officer,~~ security guard.
   b. Familiarity with this section.
   c. Range firing and procedure and hand gun safety and maintenance, and
   d. Any other topics of armed ~~private security officer~~ security guard training curriculum which the Board deems necessary.

(2) An applicant for an armed security ~~officer~~ guard firearm registration permit must fire a minimum qualifying score to

be determined by the Board and the Attorney General on any approved target course approved by the Board and the Attorney General.

(3) An armed security ~~officer~~ guard must complete a refresher course and shall requalify on the prescribed target course prior to the renewal of his firearm registration permit.

(4) The Board and the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this section concerning the training requirements of this section.

(i) The Board may not issue an armed ~~private security officer~~ security guard firearm registration permit to an applicant until the applicant's employer submits evidence satisfactory to the Board ~~that:~~ that the applicant:

(1) ~~He has~~ Has satisfactorily completed an approved training course.

(2) ~~He meets~~ Meets all the qualifications established by this section and by the rules promulgated to implement this section.

(3) ~~He is~~ Is mentally and physically capable of handling a firearm within the guidelines set forth by the Board and the Attorney General.

(j) The Board and the Attorney General are authorized to prescribe reasonable rules to implement this section, including rules for periodic requalification with the firearm and for the maintenance of records relating to persons issued ~~a firearm registration card~~ an armed security guard firearm registration permit by the Board.

(k) All fees collected pursuant to G.S. ~~74C-13(c) and (d)~~ 74C-9(e)(7) and (8) shall be expended, under the direction of the Board, for the purpose of defraying the expense of administering the firearms provisions of this Chapter.

(l) The Board and the Attorney General shall establish a training program for certified trainers to be conducted by agencies and institutions approved by the Board and the Attorney General. The Board or the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.

(1) The Board and the Attorney General shall also establish renewal requirements for certified trainers.

(2) No certified trainer shall certify an armed security guard unless the armed security guard has successfully completed the training requirements set out above in subsection (h) of this section.

(m) The Board and the Attorney General shall establish a training program for unarmed security guards to be conducted by agencies and

institutions approved by the Board and the Attorney General. The Board and the Attorney General shall have the authority to promulgate all rules necessary to administer the provisions of this subsection."

Sec. 12. G.S. 74C-15 reads as rewritten:

"§ *74C-15.* ~~*Identification cards; badges; and shields*~~ *Pocket identification cards issued to licensees and trainees.*

~~(a)~~ Upon the issuance of a license or trainee permit, a pocket identification card of design, size, and content approved by the Board shall be issued by the Board without charge to each licensee or trainee. The holder must have this card in his possession at all times when he is on duty and working within the scope of his employment. When a licensee or trainee to whom a card has been issued terminates his position as a licensee or trainee, the card must be surrendered to the administrator of the Board within 10 working days thereafter.

~~(b) No person licensed under the provisions of this Chapter as a private detective shall wear, carry, or accept any badge or shield purporting to indicate that such person is a private detective or a private investigator.~~"

Sec. 13. G.S. 74C-16 reads as rewritten:

"§ *74C-16. Prohibited acts.*

~~(a) Any licensee or officer, director, partner, or manager of a licensee may divulge to any law-enforcement officer or district attorney or his representative any information the law-enforcement officer may require incident to investigation of any criminal offense. However, he shall not divulge to any other person, except as he may be required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.~~

~~(b) Every advertisement by a licensee soliciting or advertising for business shall contain his name as it appears in the records of the Board and the name in which the license was issued.~~

~~(c)~~ It shall be unlawful for anyone not licensed ~~and/or~~ or registered as required under this Chapter to:

(1) Advertise or to hold himself out to be a licensee;

(2) Advertise or to hold himself out to perform services for which a license is required~~; or~~ when, in fact, the individual is not licensed or registered in accordance with this Chapter.

~~(3) Perform or aid and abet any other individual to perform services for which a license or registration under this Chapter is required, when, in fact, the individual is not licensed and/or registered in accordance with this Chapter.~~

~~(d) No law enforcement officers of the United States, this State, any other state, or any political subdivision of a state shall be licensed as a private detective or security guard and patrol business licensee under this Chapter; provided no law enforcement officer of the United~~

~~States, this State, or any of its political subdivisions may use any motor vehicle owned or leased by a law enforcement agency in the course and scope of any private employment which is subject to regulation by the provisions of this Chapter; provided that nothing in this section shall be construed to prohibit the holder of a company police commission under Chapter 74A of the General Statutes from being licensed under this Chapter or being employed by a licensee under this Chapter.~~

~~(e) No licensee shall hold himself out as employed by or licensed by the State Bureau of Investigation.~~

~~(f) No sworn court official shall be licensed or registered under this Chapter.~~"

Sec. 14. G.S. 74C-17(c) and (d) read as rewritten:

"(c) In lieu of revocation or suspension of a license or permit under G.S. 74C-12, a civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person or business who violates any provision of this Chapter or any rule of the Board adopted pursuant to this Chapter. In determining the amount of any penalty, the Board shall consider the degree and extent of harm caused by the violation.

(d) Proceedings for the assessment of civil penalties under this section shall be governed by Chapter ~~150A~~ 150B of the General Statutes. If the person assessed a civil penalty fails to pay the penalty to the Board, the Board may institute an action in the superior court of the county in which the person resides or has his principal place of business to recover the unpaid amount of the penalty. An action to recover a civil penalty under this section shall not relieve any party from any other penalty prescribed by law."

Sec. 15. G.S. 74C-18(a) reads as rewritten:

"(a) To the extent that other states which provide for licensing of any private protective services ~~business~~ profession provide for similar action for citizens of this State, the Board, in its discretion, may grant a private protective services ~~business~~ license to a nonresident who holds a valid private protective services ~~business~~ license of the same type from another state upon satisfactory proof furnished to the Board that the standards of licensure in such other states are at least substantially equivalent to those prevailing in this State. Applicants shall make application to the Board on the form prescribed by the Board for all applicants, shall comply with the provisions of G.S. 74C-10, and shall pay the fees required of all applicants."

Sec. 16. Chapter 74C is amended by adding a new section to read:

"*§ 74C-21. Law enforcement officer provisions.*

(a) No law enforcement officer of the United States, this State, any other state, or any political subdivision of a state shall be licensed as a private detective or security guard and patrol licensee under this Chapter.

(b) An off-duty law enforcement officer may be employed during his off-duty hours by a licensed security guard and patrol company on an employer-employee basis. An off-duty law enforcement officer shall not wear his police officer's uniform or use the police equipment while working for a security guard and patrol company.

(c) A law enforcement officer may provide security guard and patrol services on an individual employer-employee basis to a person, firm, association, or corporation that is not engaged in a security guard and patrol profession."

Sec. 17. G.S. 74C-31(a) reads as rewritten:

"(a) The Fund shall serve as a guaranty for the obligations of those licensed under this Chapter. The Fund's liability, as guaranty, is contingent upon a licensee or trainee defaulting upon an obligation owed to a person by the licensee or trainee where said obligation was entered into by the licensee or trainee within the scope of the licensee's or trainee's employment in providing private protective services. The Board shall be subrogated by the licensee or trainee in the amount paid out and the license or trainee permit shall be revoked or suspended until such time as full restitution is made to the Fund. The aggrieved party must exhaust all civil remedies against the licensee or trainee or the estate of the licensee or trainee before seeking reimbursement from the Fund. The following shall be excluded from reimbursable losses:

(1) Losses of spouses, children, parents, grandparents, siblings, partners, associates, and employees of the licensee or trainee causing the losses;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby; and

(3) Losses that have been otherwise received from or paid by or on behalf of the licensee who defaulted on an obligation."

Sec. 18. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

S.B. 758 **CHAPTER 760**

AN ACT TO CLARIFY THE DESIGNATION OF CERTAIN OFFICIAL LICENSE PLATES ISSUABLE ON REQUEST TO THE JUDICIARY, TO SET A UNIFORM RENEWAL DATE FOR SPECIAL REGISTRATION PLATES ISSUED TO

AMATEUR RADIO OPERATORS, AND TO AUTHORIZE THE USE OF A HANDICAPPED IDENTIFICATION CARD FOR VEHICLES THAT TRANSPORT THE HANDICAPPED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-81(3) reads as rewritten:

"(3) Judicial. -- Official plates issued to the judiciary shall be issued as follows:

a. Appellate division. -- Official plates that shall be issued upon request to the Chief Justice and Associate Justices of the Supreme Court of North Carolina and the Chief Judge and Associate Judges of North Carolina Court of Appeals shall bear the letter 'J' followed by numerical designation from 1 through 19. The Chief Justice upon request shall be issued the plate bearing number 1 and the remaining plates shall first be issued upon request to the Associate Justices on the basis of seniority. The Chief Judge shall be issued upon request the next such judicial plate and the remaining plates shall be issued upon request to the Associate Judges on the basis of seniority. Retired members of the Supreme Court and the Court of Appeals shall receive an official plate upon request similar in every respect to the plate issued to the regular justices and judges bearing the numerical designation of his or her position of seniority at the time of retirement except that the numerical designation shall be followed with the letter 'X'. Official plate J-20 may be issued upon request to the Director of the Administrative Office of the Courts.

b. Superior court. -- Official plates shall be issued to the various senior resident superior court judges upon request and shall bear the letter 'J' followed by a numerical designation which for a district as defined in G.S. 7A-41.1(a) shall be equal to the sum of the numerical designation of their respective judicial districts plus 20. Where there is more than one regular resident superior court judge for such a district, official plates shall upon request be issued to other resident judges of the district similar to the official plate to be issued upon request to the senior resident superior court judge of the district except the numerical designation on each subsequent plate shall be followed by a hyphen and a letter of the alphabet beginning with the letter 'A', which shall be indicative of the recipient's position as to

seniority. The numerical designation for the senior resident superior court judge for a set of districts as defined in G.S. 7A-41.1(a) shall be equal to the sum of 20 plus the numerical designation which the districts in the set have in common and shall be followed by no letter, and the numerical designation for each other regular resident superior court judge of the set of districts shall have the same numerical designation as that of the senior resident superior court judge and shall be followed by a hyphen and a letter of the alphabet beginning with the letter 'A' which shall indicate the recipient's position as to seniority among all of the regular resident superior court judges of the set of districts and shall not necessarily correspond with the letter designation of the superior court district established under G.S. 7A-41 for which he is a resident judge, provided that in the set of districts 7B and 7C, the senior resident superior court judge for that set shall be issued on request an official plate bearing the designation ~~27BC~~ 27C following the letter 'J', and all other resident superior court judges of the set shall be issued on request an official plate bearing that designation followed by ~~a hyphen and a letter of the alphabet beginning with the letter 'A' indicating that judge's position as to seniority among all the regular resident superior court judges of that set~~ the letter 'B'. Special judges and emergency judges of the superior court shall be issued an official plate bearing the letter 'J' with a numerical designation as designated by the Administrative Office of the Courts with the approval of the Chief Justice of the Supreme Court of North Carolina. Retired judges shall be issued a similar plate except that the numerical designation shall be followed by the letter 'X'.

c. North Carolina district court judges. -- An official plate shall be issued upon request to each chief judge of the district courts of North Carolina which shall bear the letter 'J' followed by a numerical designation equal to the sum of the numerical designation of their respective district court districts plus 100 and all other judges of the district courts serving within the same district court district shall, upon request, be issued an official plate bearing the same letter and numerical designation as appears on the official plate issued to the chief district judge of the district court district except that on each

subsequent official plate issued within a district, the numerical designation shall be followed by a letter of the alphabet beginning with the letter 'A' which shall be indicative of the recipient's position as to seniority. Retired judges shall be issued a similar plate except that the numerical designation shall be followed by the letter 'X'.

c1. Clerks of Superior Court. -- Official plates shall be issued upon request to the various clerks of superior court which plate shall bear the words 'Clerk Superior Court', followed by the numerical designation of their respective counties in alphabetical order, beginning with 100 and preceded by the letter 'C'.

d. District attorneys. -- Official plates shall be issued upon request to the various district attorneys which plates shall bear the letters 'DA', followed by a numerical designation indicative of their prosecutorial district.

e. United States judges. -- Official plates shall be issued upon request to Justices of the United States Supreme Court, Judges of the United States Circuit Court of Appeals and to the District Judges of the United States District Courts residing in North Carolina and shall bear the words 'U.S. Judge', followed by a numerical designation beginning with the number '1' which shall be indicative of the judge's seniority position as to the date he began continuous service as a United States Judge as designated by the Secretary of State. Retired judges and judges who have taken senior status shall be issued similar plates except that the numerical designation shall be based upon the date of such retirement or assumption of senior status and shall follow the numerical designation of active justices and judges.

f. United States attorneys. -- Official plates shall be issued upon request to the United States Attorneys, which plates shall bear the letters, 'U.S. Attorney', followed by a numerical designation indicative of their district, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

g. United States marshals. -- Official plates shall be issued upon request to the United States Marshals, which plates shall bear the letters, 'U.S. Marshal', followed by a numerical designation indicative of their district, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District."

Sec. 2. G.S. 20-81.1 reads as rewritten:

"*§ 20-81.1. Special plates for amateur radio operators.*

(a) Every owner of a motor vehicle who holds an unrevoked and unexpired amateur radio license of a renewable nature, issued by the Federal Communications Commission, shall, upon payment of the required ~~registration and licensing fees for such vehicle as required by law and an additional initial fee of ten dollars ($10.00),~~ fee and proof of purchase of a portable radio unit, be issued plates of similar size and design as the regular registration plates provided for by G.S. 20-63 or other provisions of law, upon which shall be inscribed, in lieu of the usual registration number, the official amateur radio call letters of such persons as assigned by the Federal Communications Commission. ~~No additional fee may be required to renew a special plate issued under this section, upon proof of purchase of a portable radio unit by the vehicle owner.~~ The fee for a special plate under this section is the fee that would otherwise be payable under G.S. 20-87, plus an additional fee of ten dollars ($10.00) when the plate is first issued and every fifth year after the plate is issued. Special registration plates issued under this section expire on June 30 of each year and are renewable through the use of annual renewal stickers in the same manner as regular registration plates are renewed.

(b) Application for special registration plates shall be made on forms which shall be provided by the Division of Motor Vehicles and shall contain proof satisfactory to the Division that the applicant holds an unrevoked and unexpired official amateur radio license and shall state the call letters which have been assigned to the applicant. The special registration plates shall provide for call letters with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each. ~~Applications must be filed prior to 60 days before the day when regular registration plates for the year are made available to motor vehicle owners.~~

(c) If the amateur radio license of a person holding a special plate issued pursuant to this section shall be canceled or rescinded by the Federal Communications Commission, such person shall immediately return the special plates to the Division of Motor Vehicles and receive a regular plate at no charge. ~~Special registration plates issued pursuant to this section shall be valid for five years and shall be renewed through the use of annual renewal stickers in the same manner as regular registration plates are renewed.~~"

Sec. 3. G.S. 20-37.6 reads as rewritten:

"*§ 20-37.6. Handicapped: drivers and passengers: parking privileges.*

(a) Any vehicle driven by or transporting a person who is handicapped as defined by G.S. 20-37.5 or transporting a person who is visually impaired as defined by G.S. 111-11, as certified by a

licensed ophthalmologist, optometrist, or Division of Services for the Blind, may be parked for unlimited periods in parking zones restricted as to the length of time parking is permitted. This provision has no application to those zones or during times in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. Any qualifying vehicle may park in spaces designated by aboveground markings as restricted to vehicles distinguished as being driven by or as transporting the handicapped or as transporting the visually impaired.

(b) Handicapped Car Owners; Distinguishing License Plates. -- If the handicapped or visually impaired person is a registered owner of a vehicle, this vehicle may display a distinguishing license plate. This license plate shall be issued for the normal fee applicable to standard license plates. Any vehicle owner who qualifies for a distinguishing license plate may also receive ~~up to two distinguishing placards as provided for in G.S. 20-37.6(c)~~ a combination of two distinguishing placards or identification cards under subsection (c).

(c) Handicapped Drivers and Passengers; Distinguishing Placards or Identification Cards. -- A person who is either handicapped or visually impaired may apply for issuance of a distinguishing placard or a wallet-size identification card to be designed by the Division of Motor Vehicles of the Department of Transportation, in cooperation with the Office for the Handicapped of the Department of Insurance. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped or visually impaired people, may also apply. ~~The~~ A placard shall be at least 6 inches by 12 inches in ~~size~~ size, and a placard or identification card shall contain all the information the Division of Motor Vehicles deems necessary for ~~purpose of~~ designation and enforcement. ~~The~~ A placard or identification card shall be displayed on the driver's side of the dashboard of a vehicle only when the vehicle is being driven by a duly licensed handicapped driver or is being used to transport handicapped or visually impaired passengers. When the placard or identification card is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to ~~G.S. 20-37.6(b)~~ subsection (b) shall apply. The Division of Motor Vehicles shall establish procedures for the issuance of the distinguishing ~~placards.~~ placards and identification cards, and may charge a fee sufficient to pay the actual cost of issuance. ~~Two~~ A combination of two placards or identification cards may be issued to an applicant on request. Applicants who are organizations may receive one placard or identification card for each transporting vehicle.

(d) Designation of Parking Places. -- Designation of parking spaces for the physically handicapped and the visually impaired on streets and

in other areas, including public vehicular areas specified in G.S. 20-4.01(32), shall be by the use of sign R7-8 for multiple parking spaces as shown in the Manual on Uniform Traffic Control Devices, or sign R7-8a for single parking spaces as shown in the N.C. Department of Transportation Supplement to the Manual on Uniform Traffic Control Devices. Nonconforming signs in use prior to July 1, 1979, shall not constitute a violation of G.S. 20-37.6(e)(4) during their useful lives, which shall not be extended by other means than normal maintenance. These nonconforming signs shall be removed and be replaced with conforming signs before January 1, 1989; provided that a sign or symbol painted on the surface of a parking space need not be removed when a conforming sign is erected.

(d1) Unique Properties. -- The owner of private property which contains a public vehicular area, on which is to be designated one or more parking spaces for the physically handicapped and the visually impaired, may file a written certification, on a form supplied by the Department of Transportation, that signs conforming to G.S. 20-37.6(d) would not be compatible with the unique visual character of the property. Upon filing of the certification with the Department of Transportation, the owner may cause to be erected signs of materials and colors different from signs R7-8 and R7-8a. The signs shall be the same size and shape as signs R7-8 or R7-8a, as appropriate, with the same letters, words, numbers and symbols. Such signs shall be deemed to conform to G.S. 20-37.6(d).

(e) Enforcement of Handicapped Parking Privileges. -- It shall be unlawful:

(1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons or visually impaired persons when the vehicle does not display the distinguishing license ~~plate or placard~~ plate, placard, or identification card as provided in this section or a disabled veteran registration plate issued pursuant to G.S. 20-81.4;

(2) For any person not qualifying for the rights and privileges extended to handicapped or visually impaired persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license ~~plate or placard~~ plate, placard, or identification card issued pursuant to the provisions of this section;

(3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the North Carolina Building Code or as designated in G.S. 136-44.14;

(4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas specified in G.S. 20-4.01(32).

(f) Penalties for violation.

(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of twenty-five dollars ($25.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be *prima facie* evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division of Motor Vehicles. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of fifty dollars ($50.00) and whenever evidence shall be presented in any court of the fact that any such nonconforming sign or markings are being used it shall be *prima facie* evidence in any court in the State of North Carolina that the person, firm, or corporation with ownership of the property where said nonconforming signs or markings are located is ~~reponsible~~ responsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation.

(3) A law-enforcement officer, including a security officer who has authority to enforce laws on the property of his employer as specified in Chapter 74A, may cause a vehicle parked in violation of this section to be towed; and such officer shall be a legal possessor as provided in G.S. 20-161(d)(2). This law-enforcement officer, or security officer, shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from such space pursuant to

this section, except where such motor vehicle is willfully, maliciously, or negligently damaged in the removal from aforesaid space to place of storage.

(4) Notwithstanding any other provision of the General Statutes, the provisions of this section relative to handicapped parking shall be enforced by State, county, city and other municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies."

Sec. 4. This act is effective upon ratification. Section 1 applies to each affected person on the date of the first subsequent regular renewal of the person's existing plate, or upon the date of the subsequent regular issuance of the person's first plate. Section 2 applies to special plates issued for the 1990 registration year and following years.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

H.B. 18 **CHAPTER 761**

AN ACT TO DESIGNATE APPROPRIATED FUNDS FOR THE ADMINISTRATION OF THE SATELLITE JAIL/WORK RELEASE UNIT FUND AND TO REDUCE PRISON AND JAIL OVERCROWDING.

The General Assembly of North Carolina enacts:

Section 1. From the funds appropriated to the Office of State Budget and Management for the 1989-90 fiscal year and the 1990-91 fiscal year for the County Satellite Jail/Work Release Units, the Office of State Budget and Management may use no more than one percent (1%) of the funds appropriated for costs of administering the Fund. These funds shall not revert at the end of the fiscal year for which they are appropriated but shall remain available until expended for the County Satellite Jail/Work Release Units Fund.

Sec. 2. G. S. 153A-230.2 reads as rewritten:

"§ *153A-230.2. Creation of Satellite Jail/Work Release Unit Fund.*

(a) There is created in the Office of State Budget and Management the County Satellite Jail/Work Release Unit Fund to provide State grant funds for counties or groups of counties for construction of satellite jail/work release units for certain misdemeanants who receive active sentences. A county or group of counties may apply to the Office for a grant under this section. The application shall be in a form established by the Office. The Office shall:

(1) Develop application and grant criteria based on the basic requirements listed in this Part.

(2) Provide all Boards of County Commissioners and Sheriffs with the criteria and appropriate application forms, technical assistance, if requested, and a proposed written agreement.

(3) Review all applications.

(4) Select grantees and award grants.

(5) Award no more than ~~one million five hundred thousand dollars ($1,500,000)~~ seven hundred fifty thousand dollars ($750,000) for any one county or group of counties except that if a group of counties agrees to jointly operate one unit for males and one unit for females, the maximum amount may be awarded for each unit.

(6) Take into consideration the potential number of misdemeanants and the percentage of the county's or counties' misdemeanant population to be diverted from the State prison system.

(7) Take into consideration the utilization of existing buildings suitable for renovation where appropriate.

(8) Take into consideration the timeliness with which a county proposes to complete and occupy the unit.

(9) Take into consideration the appropriateness and cost effectiveness of the proposal.

(10) Take into consideration the plan with which the county intends to coordinate the unit with other community service programs such as intensive probation, community penalties, and community service.

When considering the items listed in subdivisions (6) through (10), the Office shall determine the appropriate weight to be given each item.

(b) A county or group of counties is eligible for a grant under this section if it agrees to abide by the basic requirements for satellite jail/work release units established in G.S. 153A-230.3. In order to receive a grant under this section, there must be a written agreement to abide by the basic requirements for satellite jail/work release units set forth in G.S. 153A-230.3. The written agreement shall be signed by the Chairman of the Board of County Commissioners, with approval of the Board of County Commissioners and after consultation with the Sheriff, and a representative of the Office of State Budget and Management. If a group of counties applies for the grant, then the agreement must be signed by the Chairman of the Board of County Commissioners of each county. Any variation from, including termination of, the original signed agreement must be approved by

both the Office of State Budget and Management and by a vote of the Board of County Commissioners of the county or counties.

When the county or group of counties receives a grant under this section, the county or group of counties accepts ownership of the satellite jail/work release unit and full financial responsibility for maintaining and operating the unit, and for the upkeep of its occupants who comply with the eligibility criteria in G.S. 153A-230.3(a)(1). The county shall receive from the Department of Correction the amount paid to local confinement facilities under G.S. 148-32.1 for prisoners which are in the unit, but do not meet the eligibility requirements under G.S. 153A-230.3(a)(1)."

Sec. 3. G.S. 148-32.1(b) reads as rewritten:

"(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded the limits established in G.S. 148-4.1(d). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 180 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility."

Sec. 4. G.S. 153A-230.3 is amended by adding a new subsection to read:

"(a1) Non-eligible for unit - If the sentencing judge finds that the misdemeanant does not meet the eligibility criteria set forth in G.S. 135A-230.3(a)(1)b., but is otherwise eligible for placement in the unit, then the Sheriff may transfer the misdemeanant from the local

confinement facility to the unit if the misdemeanant meets the eligibility criteria at a later date. The Sheriff may also transfer prisoners who were placed in the unit pursuant to G.S. 148-32.1(b) to the local confinement facility when space becomes available."

Sec. 5. G.S. 153A-230.5(a) reads as rewritten:

"(a) If a county is operating a satellite jail/work release unit prior to the enactment of this act, the county may apply to the Office of State Budget and Management for grant funds to recover any verifiable construction or renovation costs for those units and for improvement funds except that the total for reimbursement and improvement shall not exceed ~~one million five hundred thousand dollars ($1,500,000)~~ seven hundred fifty thousand dollars ($750,000). Any county accepting such a grant or any other State monies for county satellite jails must agree to all of the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3."

Sec. 6. G.S. 15A-1352(a) reads as rewritten:

"(a) A person sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine under Article 84 of this Chapter shall be committed for the term designated by the court to the custody of the Department of Correction or to a local confinement facility. If the sentence imposed for a misdemeanor is for a period of 180 days or less, the commitment must be to a facility other than one maintained by the Department of Correction, except as provided in G.S. 148-32.1(b).

If a person is sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine under Article 84 of this Chapter, the sentencing judge shall make a finding of fact as to whether the person would be suitable for placement in a county satellite jail/work release unit operated pursuant to G.S. 153A-230.3. If the sentencing judge makes a finding of fact that the person would be suitable for placement in a county satellite jail/work release unit and the person meets the requirements listed in G.S. 153A-230.3(a)(1), then the ~~judge~~ custodian of the local confinement facility may transfer ~~order~~ the misdemeanant to ~~be placed in~~ a county satellite jail/work release unit."

Sec. 7. G.S. 153A-230.3(a) reads as rewritten:

"(a) Eligibility for Unit. -- The following rules shall govern which misdemeanants are housed in a satellite jail/work release unit:

(1) Any convicted misdemeanant who:

a. Receives an active sentence in the county or group of counties operating the unit.

b. Is employed in the area or can otherwise earn his keep by working at the unit on maintenance and other jobs related

to upkeep and operation of the unit or by assignment to community service work, and

c. Consents to placement in the unit under these conditions,

shall not be sent to the State prison system except by written findings of the sentencing judge that the misdemeanant is violent or otherwise a threat to the public and therefore unsuitable for confinement in the unit.

(2) The County shall offer work release programs to both male and female misdemeanants, through local facilities for both, or through a contractual agreement with another entity for either, provided that such arrangement is in reasonable proximity to the misdemeanant's workplace.

(3) The sentencing judge shall make a finding of fact as to whether the misdemeanant is qualified for occupancy in the unit pursuant to G.S. 15A-1352(a). If the sentencing judge determines that the misdemeanant is qualified for occupancy in the unit and the misdemeanant meets the requirements of subdivision (1), then the ~~judge~~ custodian of the local confinement facility may transfer ~~order~~ the misdemeanant to ~~be placed in~~ the unit. If at any time either prior to or after placement of an inmate into the unit the Sheriff determines that there is an indication of violence, unsuitable behavior, or other threat to the public that could make the prisoner unsuitable for the unit, the Sheriff may ~~hold~~ place the prisoner in the county jail ~~while petitioning the court for a final decision regarding placement of the prisoner~~.

(4) The Sheriff may accept work release misdemeanants from other counties provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening.

(5) The Sheriff may accept work release misdemeanants or felons from the Department of Correction provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

H.B. 193 CHAPTER 762

AN ACT TO REINSTATE THE PURCHASE OF STATE RETIREMENT SERVICE CREDIT FOR CERTAIN PERIODS OF MILITARY SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-4.12 is amended by adding a new subsection to the end to read:

"(e) Any member of the Retirement System who has five or more years of creditable service as a member of the General Assembly may purchase credit for service in the Armed Forces of the United States eligible under subsection (d) of this section by making a lump sum payment into the Annuity Savings Fund equal to the full actuarial cost as provided for in G.S. 135-4(m)."

Sec. 2. G.S. 128-26 is amended by adding a new subsection (j1) to read:

"(j1) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service for service in the Armed Forces of the United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

(1) For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, and whose current membership began on or prior to January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service times the employee contribution rate at that time times the months of service to be purchased with sufficient interest added thereto so as to equal one-half of the cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

(2) For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph (1) of this subdivision, whose current membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation

of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term 'full liability' includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of active duty in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of active duty as required by the Armed Forces of the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the national guard or any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed."

Sec. 3. G.S. 135-4(f) reads as rewritten:

"(f) Armed Service Credit. --

(1) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and prior to February 17, 1941, and who returned to the service of the State within a period of two years after they were first eligible to be separated or released from such armed services under other than dishonorable conditions shall be entitled to full credit for all prior service.

(2) Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952, or who devote not less than 10 years of service to the State after they are separated or released from such armed services under other than dishonorable conditions, shall be entitled to full credit for all prior service, and, in addition they shall receive membership service credit for the period of service in such armed services up to the date they were first eligible to be separated

or released therefrom, occurring after the date of establishment of the Retirement System.

(3) Teachers and other State employees who enter the armed services of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after they are first eligible to be separated or released from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the armed services.

(4) Under such rules as the ~~board of trustees~~ Board of Trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he would have been paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the ~~board of trustees~~ Board of Trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of G.S. 135-8, the Board of Trustees shall refund to or reimburse such member for such payments.

(5) The provisions of this subsection shall also apply to members of the national guard with respect to teachers and State employees who are called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the national guard.

(6) Repealed by Session Laws 1981, c. 636, s. 1.

(7) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service in the Armed Forces of the

United States, not otherwise allowed, by paying a total lump sum payment determined as follows:

a. For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, whose current membership began on or prior to July 1, 1981, and who make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service times the employee contribution rate at that time times the months of service to be purchased, with sufficient interest added thereto so as to equal one-half of the cost of allowing this service, plus an administrative fee to be set by the Board of Trustees.

b. For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by paragraph a. of this subdivision, whose current membership began on or before July 1, 1981, but who did not or do not make this purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term 'full liability' includes assumed post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service allowed under this subdivision shall be only for the initial period of active duty in the Armed Forces of the United States up to the date the member was first eligible to be separated and released and for subsequent periods of active duty as required by the Armed Forces of

the United States up to the date of first eligibility for separation or release, but shall not include periods of active duty in the Armed Forces of the United States creditable in any other retirement system except the national guard or any reserve component of the Armed Forces of the United States. Provided, creditable service may be allowed only for active duty in the Armed Forces of the United States of a member that resulted in a general or honorable discharge from duty. The member shall submit satisfactory evidence of the service claimed."

Sec. 4. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

H.B. 236 **CHAPTER 763**

AN ACT TO CLARIFY MAGISTRATES' GUILTY PLEA JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-273(1) reads as rewritten:

"(1) In misdemeanor or infraction cases, other than ~~traffic~~ traffic, hunting, fishing, boating, and alcohol offenses, in which the maximum punishment which can be adjudged cannot exceed imprisonment for 30 days, or a fine of fifty dollars ~~($50.00),~~ ($50.00) or a penalty of not more than fifty dollars ($50.00), exclusive of costs, to accept guilty pleas or admissions of responsibility and enter judgment;".

Sec. 2. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

H.B. 268 **CHAPTER 764**

AN ACT TO MAKE VARIOUS CHANGES IN THE LAWS RELATING TO TRAINING FOR SANITARIANS, LOCAL HEALTH BOARD MEMBERSHIP, REVIEW AND APPEAL PROCEDURES FOR IMPROVEMENT PERMIT APPLICATIONS, AND PERMITTING OF ON-SITE SEWAGE SYSTEMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90A-53 reads as rewritten:

"§ *90A-53. Qualifications and examination for registration as a sanitarian.*

The Board shall issue certificates to qualified persons as registered sanitarians. A certificate as a registered sanitarian shall be issued to any person upon the Board's determination that such person:

(1) Has made application to the Board on a form prescribed by the Board;

(2) Is of good moral character;

(3) Has received a degree from a post-secondary educational institution rated as acceptable by the Board with a minimum of 15 semester hours or its equivalent in the physical and/or biological sciences;

(4) Has satisfactorily completed a course in specialized instruction and training approved by the Board which course shall be designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by public health sanitation, the elements of good environmental health sanitation, the laws and regulations governing sanitation in environmental health and the protection of the public health;

(5) Has had at least two years' experience in the field of environmental health sanitation, or at least one year of ~~such~~ experience in the field of environmental health sanitation plus one year of graduate study in the sanitary ~~sciences;~~ sciences, or at least one year of experience in the field of environmental health sanitation plus a degree in environmental health from an accredited university or college;

(6) Has passed an examination administered by the Board designed to test for competence in the subject matters of environmental health sanitation. The examination shall be in a form prescribed by the Board and may be oral, written, or both. The examination for applicants shall be held annually or more frequently as the Board may by rule prescribe, at a time and place to be determined by the Board. A person shall not be registered if such person fails to meet the minimum grade requirements for examination specified by the Board. Failure to pass an examination shall not prohibit such person from being examined at subsequent times and places as specified by the Board; and

(7) Has paid a fee set by the Board not to exceed the cost of the examination."

Sec. 2. G.S. 130A-35 reads as rewritten:

"§ *130A-35. County board of health; appointment; terms.*

(a) A county board of health shall be the policy-making, rule-making and adjudicatory body for a county health department.

(b) The members of a county board of health shall be appointed by the county board of commissioners. The board shall be composed of 11 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include: one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, one county ~~commissioner and four~~ commissioner, one professional engineer, and three representatives of the general public. All members shall be residents of the county. If there is not a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered ~~nurse or a licensed pharmacist~~ nurse, a licensed pharmacist, or a professional engineer available for appointment, an additional representative of the general public shall be appointed. If however, one of the ~~six~~ designated professions has only one person residing in the county, the county commissioners shall have the option of appointing that person or a member of the general public.

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve more than three consecutive three-year terms unless the member is the only person residing in the county who represents one of the ~~six~~ professions designated in subsection (b) of this section. The county commissioner member shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered ~~nurse or a licensed pharmacist~~ nurse, a licensed pharmacist, or a professional engineer, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered ~~nurse or a licensed pharmacist~~ nurse, a licensed pharmacist, or a professional engineer becomes available for appointment. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a three-year term.

(d) Vacancies shall be filled for any unexpired portion of a term.

(e) A chairperson shall be elected annually by a county board of health. The local health director shall serve as secretary to the board.

(f) A majority of the members shall constitute a quorum.

(g) A member may be removed from office by the county board of commissioners for cause.

(h) A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence

and travel shall be in accordance with a policy set by the county board of commissioners.

(i) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting."

Sec. 3. G.S. 130A-37 reads as rewritten:

"§ *130A-37. District board of health.*

(a) A district board of health shall be the ~~policymaking,~~ policy-making, rule-making and adjudicatory body for a district health department and shall be composed of 15 members; provided, a district board of health may be increased up to a maximum number of 18 members by agreement of the boards of county commissioners in all counties that comprise the district. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) The county board of commissioners of each county in the district shall appoint one county commissioner to the district board of health. The county commissioner members of the district board of health shall appoint the other members of the board, including at least one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered ~~nurse and one licensed pharmacist,~~ nurse, one licensed pharmacist, and one professional engineer. The composition of the board shall reasonably reflect the population makeup of the entire district and provide equitable district-wide representation. All members shall be residents of the district. If there is not a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered ~~nurse or a licensed pharmacist~~ nurse, a licensed pharmacist, or a professional engineer available for appointment, an additional representative of the general public shall be appointed. If however, one of the ~~six~~ designated professions has only one person residing in the district, the county commissioner members shall have the option of appointing that person or a member of the general public.

(c) Except as provided in this subsection, members of a district board of health shall serve terms of three years. Two of the original members shall serve terms of one year and two of the original members shall serve terms of two years. No member shall serve more than three consecutive three-year terms unless the member is the only person residing in the district who represents one of the ~~six~~ professions designated in subsection (b) of this section. County commissioner members shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered

~~nurse or a licensed pharmacist,~~ nurse, a licensed pharmacist, or a professional engineer that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered ~~nurse or a licensed pharmacist~~ nurse, a licensed pharmacist, or a professional engineer becomes available for appointment. The county commissioner members may appoint a member for less than a three-year term to achieve a staggered term structure.

(d) Whenever a county shall join or withdraw from an existing district health department, the district board of health shall be dissolved and a new board shall be appointed as provided in subsection (c).

(e) Vacancies shall be filled for any unexpired portion of a term.

(f) A chairperson shall be elected annually by a district board of health. The local health director shall serve as secretary to the board.

(g) A majority of the members shall constitute a quorum.

(h) A member may be removed from office by the district board of health for cause.

(i) A member may receive a per diem in an amount established by the county commissioner members of the district board of health. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county commissioner members of the district board of health.

(j) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

(k) A district board of health is authorized to provide liability insurance for the members of the board and the employees of the district health department. A district board of health is also authorized to contract for the services of an attorney to represent the board, the district health department and its employees, as appropriate. The purchase of liability insurance pursuant to this subsection waives both the district board of health's and the district health department's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. By entering into a liability insurance contract with the district board of health, an insurer waives any defense based upon the governmental immunity of the district board of health or the district health department."

Sec. 4. Appointment of a professional engineer shall be made at the vacancy of the next public member on each local and district board of health as provided in Sections 2 and 3 of this act.

Sec. 5. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"*§ 130A-340. Review procedures and appeals.*

The Department, upon request by an applicant for an improvement permit, shall provide a technical review of any scientific data and system design submitted by the applicant. The data and system design shall be evaluated by professional peers of those who prepared the data and system design. The results of the technical review shall be available prior to a decision by the local health department and shall not affect an applicant's right to a contested hearing under Chapter 150B of the General Statutes."

Sec. 6. G. S. 130A-335 is amended by adding a new subsection to read:

"(g) Prior to denial of an improvement permit, the local health department shall advise the applicant of possible site modifications or alternative systems, and shall provide a brief description of those systems. When an improvement permit is denied, the local health department shall issue the site evaluation in writing stating the reasons for the unsuitable classification. The evaluation shall also inform the applicant of the right to an informal review by the Department, the right to appeal under G.S. 130A-24, and to have the appeal held in the county in which the site for which the improvement permit was requested is located."

Sec. 7. G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify sanitary systems of sewage collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, standards for operation and ownership requirements for each classification of sanitary systems of sewage collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules or this Article. The permits shall be valid for a period prescribed by the rules, except that improvement permits shall be valid for a period of five years, and may be renewed upon a showing satisfactory to the Department or the local health department that the system is in compliance with the current rules and this Article. The period of time for which the permit is valid and a statement that the permit is subject to revocation if site plans or the intended use change shall be displayed prominently on both the application form for the permit and the permit."

Sec. 8. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"*§ 130A-341. Consideration of a site with existing fill.*

Upon application to the local health department, a site that has existing fill, including one on which fill material was placed prior to July 1, 1977, and that has sand or loamy sand for a depth of at least 36 inches below the existing ground surface, shall be evaluated for an on-site sewage system. The Commission for Health Services shall adopt rules to implement this section."

Sec. 9. Article 11 of Chapter 130A is amended by adding a new section to read:

"*§ 130A-342. Aerobic systems.*

(a) Individual aerobic sewage treatment plants that are approved and listed in accordance with the standards adopted by the the National Sanitation Foundation, Inc. for Class I sewage treatment plants as set out in Standard 40, as amended, shall be permitted under rules promulgated by the Commission for Health Services. The Commission for Health Services may establish standards in addition to those set by the National Sanitation Foundation, Inc.

(b) A permitted plant shall be operated and maintained by a certified wastewater treatment facility operator employed by or under contract to the county in which the plant is located.

(c) The performance of individual aerobic treatment plants is to be documented by the counties and sent to the Department of Human Resources or the Department of Natural Resources and Community Development as appropriate."

Sec. 10. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"*§ 130A-343. Experimental and innovative systems permitted.*

(a) The Commission for Health Services shall adopt rules for the approval and permitting of experimental and innovative sanitary sewage systems. The rules shall address the criteria to be considered prior to issuing a permit for such a system, requirements for preliminary design plans and specifications that must be submitted, methodology to be used, standards for monitoring and evaluating the system, research evaluation of the system, the plan of work for monitoring system performance and maintenance, and any additional matters the Commission for Health Services deems appropriate.

(b) The Commission for Health Services shall adopt rules governing the operation and maintenance of experimental and innovative sanitary sewage systems approved and permitted under subsection (a) of this section."

Sec. 11. Section 7 of this act shall become effective October 1, 1989, and shall apply to permits issued on or after that date. Sections 5 and 6 of this act shall become effective October 1, 1989, and shall apply to permits applied for on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

H.B. 1075 **CHAPTER 765**

AN ACT TO REQUIRE THE DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT TO IMPLEMENT THE MANAGEMENT PLAN WHICH WAS DEVELOPED FOR THE SECTON OF THE NEW RIVER THAT WAS DESIGNATED A SCENIC RIVER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-35.1 reads as rewritten:

"*§ 113A-35.1. Components of system; management plan; acquisition of land and easements; inclusion in national system.*

(a) That segment of the south fork of the New River extending from its confluence with Dog Creek in Ashe County downstream through Ashe and Alleghany Counties to its confluence with the north fork of the New River and the main fork of the New River in Ashe and Alleghany Counties downstream to the Virginia State line shall be a scenic river area and shall be included in the North Carolina Natural and Scenic Rivers System.

The Department shall prepare and implement a management plan for said river section. This management plan shall recognize and provide for the protection of the existing undeveloped scenic and pastoral features of the river. Furthermore, it shall specifically provide for continued use of the lands adjacent to the river for normal agricultural activities, including, but not limited to, cultivation of crops, raising of cattle, growing of trees and other practices necessary to such agricultural pursuits.

For purposes of implementing this section and the management plan, the Department is empowered to acquire in fee simple not more than 700 acres, the computation of which shall not include lands received by donation, and to acquire easements, to provide for protection of scenic values as described in G.S. 113A-38 and to provide for public access, in as many as 1,500 acres. Easements obtained for the purpose of implementing this section and the management plan shall not abridge the water rights being exercised on May 26, 1975.

Should the Governor seek inclusion of the said river segment in the National System of Wild and Scenic Rivers by action of the Secretary of Interior, such inclusion shall be at no cost to the federal government, as prescribed in the National Wild and Scenic Rivers Act, and therefore shall be under the terms described in this section of

the North Carolina Wild and Scenic Rivers Act and in the management plan developed pursuant thereto.

(b) The Department shall prepare an annual status report on the progress made in implementing the management plan required pursuant to subsection (a) of this section and the progress in implementing the management plan submitted by the Department in support of the request to the Secretary of the Interior for the river's inclusion in the National System of Wild and Scenic Rivers. The status report shall evaluate the extent to which current implementation of the management plans has in fact maintained the river's free-flowing state and protected the scenic conditions of the river and the adjacent lands consistent with the purpose of this Article. If implementation of either management plan is incomplete at the time the report is filed, the Secretary shall submit a schedule for implementing the remainder of the plan. The status report shall be filed with the General Assembly no later than January 15 of each year, beginning in 1990."

Sec. 2. This act is effective upon ratification and applies to any management plan that has not been completely implemented by that date.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

H.B. 1124 **CHAPTER 766**

AN ACT TO PROVIDE FOR PUBLIC NOTICE OF PROPOSED SPECIAL ORDERS BY CONSENT AND FOR PUBLIC MEETINGS CONCERNING PROPOSED SPECIAL ORDERS BY CONSENT IF THE ENVIRONMENTAL MANAGEMENT COMMISSION DETERMINES THAT THERE IS A SIGNIFICANT INTEREST IN HOLDING SUCH MEETING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.2 reads as rewritten:

"§ *143-215.2. Special orders.*

(a) Issuance. -- The Commission is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by

such special order, as the Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the ~~water~~ water, subject to the provisions of subsection (a1) of this section regarding proposed orders, and such ~~document~~ consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing. Provided, however, that the provisions of this section shall not apply to any agricultural operation, such as the use or preparation of any land for the purposes of planting, growing, or harvesting plants, crops, trees or other agricultural products, or raising livestock or poultry.

(a1) Public Notice and Review of Consent Orders.

(1) The Commission shall give notice of a proposed consent order to the proper State, interstate, and federal agencies, to interested persons, and to the public. The Commission may also provide any other data it considers appropriate to those notified. The Commission shall prescribe the form and content of the notice. The notice shall be given at least 45 days prior to any final action regarding the consent order. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county in which the pollution originates.

(2) Any person who desires a public meeting on any proposed consent order may request one in writing to the Commission within 30 days following date of the notice of the proposed consent order. The Commission shall consider all such requests for meetings. If the Commission determines that there is significant public interest in holding a meeting, the Commission shall schedule a meeting and shall give notice of such meeting at least 30 days in advance to all persons to whom notice of the proposed consent order was given and to any other person requesting notice. At least 30 days prior to the date of meeting, the Commission shall also have a copy of the notice of the meeting published at least one time in a newspaper having general circulation within the county in which the pollution originates. The Commission shall prescribe the form and content of notices under this subsection.

(3) The Commission shall prescribe the procedures to be followed in such meetings. If the meeting is not conducted by the Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written

comment, exhibits or other documents presented at the meeting, to the Commission for its consideration prior to final action granting or denying the consent order.

(4) The Commission shall take final action on a proposed consent not later than 60 days following notice of the proposed consent order or, if a public meeting is held, within 90 days following such meeting.

(b) Procedure to Contest Certain Orders. -- A special order that is issued without the consent of the person affected may be contested by that person by filing a petition for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the person affected does not file a petition within the required time, the order is final and is not subject to review.

(d) Effect of Compliance. -- Any person who installs a treatment works for the purpose of alleviating or eliminating water pollution in compliance with the terms of, or as a result of the conditions specified in, a permit issued pursuant to G.S. 143-215.1, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Commission or a court rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for a period to be fixed by the Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

(1) The treatment works result in the elimination or alleviation of water pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance."

Sec. 2. G.S. 143-215.110 reads as rewritten:

"§ *143-215.110. Special orders.*

(a) Issuance. -- The Commission is hereby empowered, after the effective date of standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from time to time to modify or revoke) a special order or other appropriate instrument, to any person whom it

finds responsible for causing or contributing to any pollution of the air within the area for which standards have been established. Such an order or instrument may direct such person to take or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the air, subject to the provisions of subsection (a1) of this section regarding proposed orders, and such ~~document~~ consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing.

(a1) Public Notice and Review of Consent Orders.

(1) The Commission shall give notice of a proposed consent order to the proper State, interstate, and federal agencies, to interested persons, and to the public. The Commission may also provide any other data it considers appropriate to those notified. The Commission shall prescribe the form and content of the notice. The notice shall be given at least 45 days prior to any final action regarding the consent order. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county in which the pollution originates.

(2) Any person who desires a public meeting on any proposed consent order may request one in writing to the Commission within 30 days following date of the notice of the proposed consent order. The Commission shall consider all such requests for meetings. If the Commission determines that there is significant public interest in holding a meeting, the Commission shall schedule a meeting and shall give notice of such meeting at least 30 days in advance to all persons to whom notice of the proposed consent order was given and to any other person requesting notice. At least 30 days prior to the date of meeting, the Commission shall also have a copy of the notice of the meeting published at least one time in a newspaper having general circulation within the county in which the pollution originates. The Commission shall prescribe the form and content of notices under this subsection.

(3) The Commission shall prescribe the procedures to be followed in such meetings. If the meeting is not conducted by the Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written

comment, exhibits or other documents presented at the meeting, to the Commission for its consideration prior to final action granting or denying the consent order.

(4) The Commission shall take final action on a proposed consent not later than 60 days following notice of the proposed consent order or, if a public meeting is held, within 90 days following such meeting.

(b) Procedure to Contest Certain Orders. -- A special order that is issued without the consent of the person affected may be contested by that person by filing a petition for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the person affected does not file a petition within the required time, the order is final and is not subject to review.

(d) Effect of Compliance. -- Any person who installs an air-cleaning device for purpose of alleviating or eliminating air pollution in compliance with the terms of, or as result of the conditions specified in, a permit issued pursuant to G.S. 143-215.108, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Commission or a court, rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of air pollution, for a period to be fixed by the Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date such special order, consent special order, assurance of voluntary compliance, other document or decision, or the conditions of such permit become finally effective, if:

(1) The air-cleaning devices result in the elimination or alleviation of air pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance, or other document or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance."

Sec. 3. This act shall become effective 1 October 1989, and applies to all proposed consent orders entered into on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

S.B. 383 **CHAPTER 767**

AN ACT TO BROADEN COVERAGE UNDER THE STATE SCHOLARSHIP PROGRAM FOR CHILDREN OF WAR VETERANS AND ESTABLISH ENTITLEMENT TERMINATION DATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 165-20(4)d. reads as rewritten:

"d. Vietnam era, meaning the period beginning on August 5, 1964, ~~and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress~~ and ending on May 7, 1975."

Sec. 2. G.S. 165-21 reads as rewritten:

"§ *165-21. Scholarship.*

A scholarship granted pursuant to this Article shall consist of the following benefits in either a State or private educational institution:

(1) With respect to State educational institutions, unless expressly limited elsewhere in this Article, a scholarship shall consist of:
   a. Tuition,
   b. A reasonable board allowance,
   c. A reasonable room allowance,
   d. Matriculation and other institutional fees required to be paid as a condition to remaining in said institution and pursuing the course of study selected, excluding charges or fees for books, supplies, tools and clothing.

(2) With respect to private educational institutions, a scholarship shall consist of a monetary allowance as prescribed in G.S. 165-22.1(d).

(3) Only one scholarship may be granted pursuant to this Article with respect to each child and it shall not extend for a longer period than four academic years, which years, however, need not be consecutive.

(4) No educational assistance shall be afforded a child under this Article after the end of a 10-year period beginning on the date the scholarship is first awarded. Those persons who have been granted a scholarship under this Article prior to the effective date of this act shall be entitled to the remainder of their period of scholarship eligibility if used prior to August 1, 1999. Whenever a child is enrolled in an educational institution and the period of entitlement ends while enrolled in a term, quarter or semester, such period shall be extended to the end of such term, quarter or

semester, but not beyond the entitlement limitation of four academic years."

Sec. 3. G.S. 165-22(3) reads as rewritten:

"(3) Class II: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of:

a. Is or was at the time of his death receiving compensation for a wartime service-connected disability of ~~thirty percent (30%)~~ twenty percent (20%) or more, but less than one hundred percent (100%), as rated by the United States Veterans Administration, or

b. Is or was at the time of his death receiving wartime compensation for a statutory award for arrested pulmonary tuberculosis, as rated by the United States Veterans Administration~~, or~~

~~c. Repealed by Session Laws 1975, c. 160, s. 2~~."

Sec. 4. G.S. 165-22(4) reads as rewritten:

"(4) Class III: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed ~~of,~~ of: ~~is or was at the time of his death drawing pension for permanent and total disability, nonservice-connected, as rated by the United States Veterans Administration.~~

a. Is or was at the time of his death drawing pension for permanent and total disability, nonservice-connected, as rated by the United States Veterans Administration, or

b. Is deceased and who does not fall within the provisions of any other eligibility class described in G.S. 165-22(1), (2), (3), (4)a., nor (5) provided such child is less than 23 years of age at the time of application for such scholarship."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

S.B. 656 **CHAPTER 768**

AN ACT TO PROVIDE THAT UPON MERGER OF TWO SCHOOL ADMINISTRATIVE UNITS WITHIN CERTAIN COUNTIES WHEREIN ONE OF THE MERGING UNITS HAS VOTED A SUPPLEMENTAL SCHOOL TAX, THE GEOGRAPHIC AREA SUBJECT TO THE TAX SHALL BE EXPANDED WITHOUT VOTER APPROVAL TO INCLUDE THE ENTIRE GEOGRAPHIC AREA ENCOMPASSED BY THE NEW SCHOOL ADMINISTRATIVE UNIT RESULTING FROM

THE MERGER; AND, IF THE STATESVILLE CITY SCHOOL ADMINISTRATIVE UNIT IS MERGED WITH THE IREDELL COUNTY SCHOOL ADMINISTRATIVE UNIT, TO MAKE A CONFORMING CHANGE TO THE DISTRIBUTION OF LIQUOR STORE PROFITS OF THE STATESVILLE ABC SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115C of the General Statutes is amended by adding a new section to read:

"*§ 115C-512. Expansion of existing supplemental school tax area pursuant to merger of school administrative units in certain counties.*

(a) This section shall apply to counties that have three school administrative units located entirely within the county, only one of which units has a supplemental school tax in effect that is levied exclusively by the elected school board of the administrative unit.

(b) If a school administrative unit in a county to which this section applies merges with another school administrative unit in the county, and one of the merging units has previously voted a supplemental school tax that is in effect prior to and at the time of the merger, then the geographic area subject to the supplemental school tax in effect prior to the merger shall be expanded to include the entire geographic area encompassed by the new school administrative unit resulting from the merger. The levy and collection of and the expenditure of revenues from the tax shall be expanded as herein provided without approval of the voters of the geographic area directly affected by the merger, and shall be used for purposes provided in G.S. 115C-501(a).

(c) Notwithstanding levying authority in existence prior to the merger, the board of county commissioners shall, upon merger of the administrative units, have the exclusive authority to levy the supplemental tax expanded in accordance with this section, provided that the tax shall be levied at a rate not to exceed the rate of the supplemental school tax in effect prior to the merger of the school administrative units."

Sec. 2. If the Statesville City Board of Education is merged with the Iredell County Board of Education, then effective for any distributions made after the effective date of the merger, Section 6.3(2) of the Charter of the City of Statesville, being Chapter 289 of the 1977 Session Laws, reads as rewritten:

"(2) Twenty-five percent (25%) shall be turned over to the ~~Board of Education of the City of Statesville~~ Iredell County Board of Education."

Sec. 3. To facilitate the transfer of students among the local school administrative units in Iredell County, the following factors

shall, in addition to other considerations, be the measure of a child's attendance in a particular school in a particular administrative unit:

(1) Distance from school.
(2) Time spent on school buses.
(3) Availability of programs or the lack of programs.
(4) Whether other members of the same family are attending the school in question and whether the school to which transfer is sought can accommodate additional students, and
(5) Distance to school which interferes with the student's participation in extracurricular activities.

The best interest of the student shall be paramount among all factors and considerations regarding student transfers.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August, 1989.

S.B. 50 **CHAPTER 769**

AN ACT TO CLARIFY THAT INCOME DERIVED FROM DEPOSITS AT THE FEDERAL HOME LOAN BANK IS EXEMPT FROM STATE INCOME TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.23(a) reads as rewritten:

"(a) Income Tax. -- Every savings and loan association shall annually file an income tax return with the Secretary of Revenue and pay an income tax equal to that which the association would be required to pay under Article 4 of Subchapter I of this Chapter if it was not exempt from that Article; provided, that interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, shall be exempt from taxation for those savings and loan associations which meet the qualified thrift lender test set forth in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (P.L. 101-73)."

Sec. 2. This act is effective upon ratification and shall apply to tax years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 525 **CHAPTER 770**

AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, TO MAKE TECHNICAL

AMENDMENTS TO THE 1989 SESSION LAWS, AND TO AMEND VARIOUS OTHER GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-60(a) is amended by deleting the word "for" in the phrase "who for shall be a resident of the prosecutorial district".

Sec. 2. G.S. 14-288.12(c) is amended by deleting "G.S. 160-52, 160-200(7)," and substituting in lieu thereof "G.S. 160A-174(a)".

Sec. 3. G.S. 14-415.1(b)(1) is amended by deleting the number "7" and substituting in lieu thereof the number "7A".

Sec. 4. The third sentence of G.S. 15A-1383(a), as amended by Chapter 1037, Section 70 of the 1987 Session Laws (1988 Regular Session), is rewritten to read:

"In drawing up the plan, the senior resident superior court judge may consult with any public official having authority within his district or set of districts as defined in G.S. 7A-41.1(a) and with any other persons as he may deem appropriate."

Sec. 5. Subsection 15(d) of Chapter 1100 of the 1987 Session Laws (1988 Regular Session) is amended by deleting "G.S. 7A-114(b)" and inserting in lieu thereof "G.S. 7A-144(b)".

Sec. 6. G.S. 18B-801(d)(5) is amended by changing the phrase "to be appointed a receiver" to read "to be appointed as receiver".

Sec. 7. G.S. 20-130(d) is amended by deleting the words "civil preparedness coordinators" and substituting in lieu thereof the words "Emergency Management coordinators".

Sec. 8. G.S. 28A-14-1(a) is amended in the first sentence by deleting the phrase "a least" and substituting in lieu thereof the phrase "at least".

Sec. 9. G.S. 28A-21-2(a) is amended by deleting "G.S. 105-2(3)" and inserting in lieu thereof "G.S. 105-2(a)(3)".

Sec. 10. G.S. 44A-4(b)(1) is amended in the first sentence of the second paragraph by deleting the word "court" and inserting in lieu thereof the word "county".

Sec. 11. G.S. 62-38 is amended by deleting "G.S. 160-2, paragraph 6" and substituting in lieu thereof "G.S. 160A-319".

Sec. 12. Chapter 78C is amended as follows:

(a) In G.S. 78C-2(1)a, by deleting "G.S. 78C-2(4)c" and substituting in lieu thereof "G.S. 78C-2(3)c";

(b) In G.S. 78C-2(1)1, by deleting "G.S. 78C-2(4)" and substituting in lieu thereof "G.S. 78C-2(1)";

(c) In G.S. 78C-2(3), by deleting "G.S. 78C-2(4)a", "G.S. 78C-2(4)c", and "G.S. 78C-2(4)d" and substituting in lieu thereof

"G.S. 78C-2(3)a", "G.S. 78C-2(3)c", and "G.S. 78C-2(3)d", respectively, wherever these appear in this subdivision;

(d) In G.S. 78C-60, by deleting "G.S. 78C-(2)a" and "G.S. 78C-(2)k" and inserting in lieu thereof "G.S. 78C-2(1)a" and "G.S. 78C-2(1)k", respectively.

Sec. 13. G.S. 87-58 is amended by deleting from the catch line the words "towns excepted;".

Sec. 14. G.S. 87-59(a) is amended by deleting "Chapter 150A" and substituting in lieu thereof "Chapter 150B".

Sec. 15. G.S. 75-50(3) is amended by deleting the words "Article 9" and substituting in lieu thereof "Article 9C".

Sec. 16. G.S. 90-88(a) is amended by deleting "G.S. 150B" and inserting in lieu thereof "Chapter 150B of the General Statutes".

Sec. 17. G.S. 90-294(c)(8) is amended by deleting "G.S. 93D" and inserting in lieu thereof "Chapter 93D of the General Statutes".

Sec. 18. G.S. 96-8(5)(d) is amended by deleting the phrase "paragraphs a, b, or c" and substituting in lieu thereof the phrase "paragraphs a or b".

Sec. 19. G.S. 96-8(5)(j) is amended in the last paragraph by deleting "Chapter 22" and "Chapter 131" and substituting in lieu thereof "Chapter 122C" and "Chapter 131E", respectively.

Sec. 20. G.S. 96-9(c)(2)c is amended by deleting "G.S. 96-13(3)" and substituting in lieu thereof "G.S. 96-13(a)(3)".

Sec. 21. G.S. 96-10(b)(1) is amended by deleting "Workmen's Compensation Law" and substituting in lieu thereof "Workers' Compensation Law".

Sec. 22. G.S. 96-13(a)(3) is amended by deleting "(i)" (second occurrence) and substituting in lieu thereof "(ii)".

Sec. 24. G.S. 106-277.17 is amended by deleting the words "director of research of the North Carolina agricultural experiment station" and substituting in lieu thereof the words "Director of the North Carolina Agricultural Research Service".

Sec. 25. G.S. 106-418.7 is amended by inserting the word "Market" between "Livestock" and "Advisory".

Sec. 26. G.S. 106-549.55(a) is amended by deleting "subdivision (1)" and substituting in lieu thereof "subdivision (17)" throughout this subsection.

Sec. 27. G.S. 106-568.8 is amended in the first paragraph by deleting the words "G.S. 106-50.6 and 106-99" and inserting in lieu thereof "G.S. 106-284.40 and 106-671".

Sec. 28. G.S. 106-661 is amended in subsections (a) and (b) by deleting the phrase "with the exception of subdivision (5)," in both subsections.

Sec. 29. G.S. 108A-101(i) is amended by deleting the words "Chapter 122" and inserting in lieu thereof the words "Chapter 122C".

Sec. 30. The catch line of G.S. 118-50 is amended by deleting the word "Rural".

Sec. 31. G.S. 135-5(e)(5) is amended by substituting the phrase "subdivision (3a) of this subsection" in lieu of the phrase "subdivision (3a) of this section" throughout the subdivision.

Sec. 32. G.S. 135-40.6(1)o is amended by deleting the phrase "coverage type (2), (3), or (5)" and substituting in lieu thereof the phrase "coverage type (2) or (3)".

Sec. 33. Effective July 1, 1986, G.S. 135-40.6A(b)(7) is amended by deleting the word "Elepharoplasties" and substituting in lieu thereof "Blepharoplasties".

Sec. 34. G.S. 135-40.7A(c)(2) is amended by deleting the words "Article 1A of General Statutes Chapter 131E" and substituting in lieu thereof the words "Article 2 of General Statutes Chapter 122C".

Sec. 35. G.S. 135-40.13(c)(4)e is amended by changing the word "roles" to "rules".

Sec. 36. Chapter 159G of the General Statutes is amended by deleting "G.S. 159G-304", "G.S. 159G-305(c)", "G.S. 159G-306(a)(3)", "G.S. 159G-306(b)", "G.S. 159G-306(b)(1)", "G.S. 159G-306(b)(2)", "G.S. 159G-306(b)(3)", "G.S. 159G-306(c)", "G.S. 159G-306(c)(1)", "G.S. 159G-306(c)(3)", and "G.S. 159G-314", wherever they appear in this Chapter, and inserting in lieu thereof "G.S. 159G-4", "G.S. 159G-5(c)", "G.S. 159G-6(a)(3)", "G.S. 159G-6(b)", "G.S. 159G-6(b)(1)", "G.S. 159G-6(b)(2)", "G.S. 159G-6(b)(3)", "G.S. 159G-6(c)", "G.S. 159G-6(c)(1)", "G.S. 159G-6(c)(3)", and "G.S. 159G-14", respectively.

Sec. 37. G.S. 160A-71(b)(1) is amended by deleting the reference to "Article 33B" and replacing it with a reference to "Article 33C".

Sec. 38. G.S. 163-275(16) is amended by substituting "G.S. 163-229(b)(2)" in lieu of "G.S. 162-229(b)(2)".

Sec. 39. Section 11 of Chapter 427 of the 1987 Session Laws is amended by deleting "1969" and substituting in lieu thereof "1959".

Sec. 40. G.S. 120-20.1 is amended by adding a new subsection to read:

"(b2) In any act ratified on or after January 11, 1989, when a new section, subsection, or subdivision is added to the General Statutes, and that section, subsection, or subdivision is underlined, the underlining is not part of the law, but merely an illustration that the material in the bill which enacted the law is new."

Sec. 41. Effective October 1, 1989, G.S. 143-117.1(3), as rewritten by Section 3 of Chapter 145, Session Laws of 1989, reads as rewritten:

"(3) 'Persons admitted' means clients of regional psychiatric hospitals, State special care centers, regional mental retardation centers, schools for emotionally disturbed children, and alcohol and drug abuse treatment centers, including clients who may be treated on an outpatient basis."

Sec. 41.1. The changes made by Chapter 713, Session Laws of 1989 to G.S. 105-159.1(d) shall not be effectuated, as similar changes were made to G.S. 105-159.1(d) by Section 1.32 of Chapter 728, Session Laws of 1989.

Sec. 41.2. Section 2 of Chapter 718, Session Laws of 1989 is amended by deleting "G.S. 105-134.6(b), as enacted by House Bill 89 or Senate Bill 51, Chapter __ of the 1989 Session Laws", and substituting "G.S. 105-134.6(b), as enacted by Chapter 728 of the 1989 Session Laws".

Sec. 41.3. Section 3 of Chapter 718, Session Laws of 1989 reads as rewritten:

"Sec. 3. Sections ~~1 and 3~~ 2 and 3 of this act are effective for taxable years beginning on or after January 1, 1989. Section 1 of this act was repealed by Section 1.3 of Chapter 728, Session Laws of 1989. ~~Section 2 of this act shall become effective for taxable years for which G.S. 105-147 is repealed by House Bill 89 or Senate Bill 51, if either bill is enacted by the 1989 General Assembly.~~"

Sec. 42. G.S. 53-2(4), as rewritten by Section 2 of Chapter 187, Session Laws of 1987, reads as rewritten:

"(4) The amount of its authorized common capital stock, the number of shares into which it is divided, the par value of each share; and the amount of common capital stock with which it will commence business. The amount of capital required to charter a bank shall be determined as herein set forth by the Commissioner of Banks who shall give due consideration to (i) the population of the proposed bank's trade area, (ii) the total deposits of those depository financial institutions already operating in the proposed bank's trade area, (iii) the economic conditions and outlook within the proposed bank's trade area, (iv) the business experience and reputation of the proposed bank's management, (v) the business experience and reputation of the proposed bank's incorporators and proposed directors, (vi) the type and nature of business activities proposed to be engaged in, and (vii) the proposed bank's projected deposit

growth and profitability. Except as otherwise provided, the amount of common capital stock required to charter a bank shall not be less than two million dollars ($2,000,000); provided, however, such amount of capital may be increased or decreased in the discretion of the Commissioner of Banks who, after considering the above enumerated criteria, determines that a greater capital requirement is necessary or that a smaller capital requirement will provide a sufficient capital base. In addition to the required capital, every bank shall have a paid in surplus of at least fifty percent (50%) of its common capital stock. The capital and paid in surplus required to charter a bank shall be exclusive of any organizational expenses. This subdivision shall not apply to banks organized and doing business prior to its adoption or amendment; provided, however, the Banking Commission is hereby authorized and directed to adopt rules and regulations to keep any original required minimum capital funds intact to the end that they remain in and with the bank as a protection for depositors."

Sec. 43. Section 4 of Chapter 195, Session Laws of 1989, is amended by deleting "G.S. 153A-58(3) reads as rewritten", and substituting "G.S. 153A-58 reads as rewritten".

Sec. 44. G.S. 143-64.33, as rewritten by Section 3 of Chapter 230, Session Laws of 1989, reads as rewritten:

"*§ 143-64.33. Advice in selecting consultants or negotiating consultant contracts.*

On architectural, engineering, or surveying contracts, the Department of Transportation or the Department of Administration may provide, upon request by a county, city, town or other subdivision of the State, advice in the process of selecting consultants or in negotiating consultant contracts with architects, engineers, or surveyors ~~or both~~ or any or all."

Sec. 45. Section 12 of Chapter 248, Session Laws of 1989, is amended by deleting "~~Board~~" both times those words appear, and substituting "~~Board~~".

Sec. 46. Section 1 of Chapter 256, Session Laws of 1989, is amended by deleting "G.S. 90-270.66(4) reads as rewritten", and substituting "G.S. 90-270.67(4) reads as rewritten".

Sec. 47. G.S. 113A-129.3(b), as enacted by Chapter 344, Session Laws of 1989, reads as rewritten:

"(b) To the extent feasible, lands and waters within this system shall be dedicated as components of the 'State Nature and Historic Preserve' as provided in Article XIV, Section 5, of the Constitution

and as nature reserves pursuant to G.S. 113A-164.1 to ~~G.S. 164.11~~ G.S. 113A-164.11."

Sec. 48. Section 4 of Chapter 100, Session Laws of 1955, as amended by Chapter 960, Session Laws of 1973, and as rewritten by Chapter 357, Session Laws of 1989, is amended by deleting "or other changes", and substituting "or other charges".

Sec. 49. G.S. 18B-1006(i)(4), as rewritten by Chapter 360, Session Laws of 1989, reads as rewritten:

"(4) A boat shall have a home port in an area where issuance of the permits listed in subdivision (3) is legal, and all passengers shall enter the boat at the home port or at other ports listed on a preannounced itinerary. The boat's permits are valid during tours that leave and return to the boat's home port, and apply regardless of whether the boat crosses into an area where sales are not legal, if the boat docks only at a port listed on the preannounced itinerary, except in an ~~emergency.;~~ emergency; and".

Sec. 50. Section 6.5(a)(1) of the Charter of the Town of Knightdale, being Chapter 155, Private Laws of 1927, as added by Chapter 430, Session Laws of 1989, reads as rewritten:

"(1) Capital Costs. 'Capital costs' shall mean costs spent for the purchase of land and development of such land for the recreational needs of the ~~the~~ citizens."

Sec. 51. G.S. 66-49.30, as rewritten by Section 7 of Chapter 441, Session Laws of 1989, reads as rewritten:

"*§ 66-49.30. Hearing granted applicant if application denied; appeal.*

If, upon application, the Commissioner finds that the permit should not be issued or renewed and denies an application, he shall notify the applicant or permittee and advise, in writing, the applicant or permittee of the reasons for the denial or nonrenewal of the permit. Within 30 days of receipt of notification the applicant or permittee may make written demand upon the Commissioner for a hearing to determine the reasonableness of the Commissioner's action. Such hearing shall be scheduled within 30 days and held within 90 days from the date of receipt of the written demand. An applicant or permittee has the right to appeal any order or any unreasonable delay pursuant to Article 4 of Chapter 150B of the General Statutes. If the Commissioner shall decline an application for renewal, that applicant may continue to do business pending any appeal taken pursuant hereto."

Sec. 52. G.S. 66-49.37(a), as rewritten by Section 10 of Chapter 441, Session Laws of 1989, reads as rewritten:

"(a) Each permit holder shall deposit, no later than two banking days from receipt, in a separate trust account in any bank located in a

~~bank~~ North Carolina or other bank approved by the Commissioner, sufficient funds to pay all moneys due or owing all collection creditors or forwarders. Said funds shall remain in the trust account until remitted to the creditor or forwarder, and shall not be commingled with any other operating funds. The trust account shall be used only for the purpose of:

(1) Remitting to collection creditors or forwarders the proceeds to which they are entitled.
(2) Remitting to the collection agency the commission that is due the collection agency.
(3) Reimbursing consumers for overpayments.
(4) Making adjustments to the trust account balance for bank service charges."

Sec. 53. Effective with respect to all elections occurring on or after January 1, 1990, G.S. 163-278.10A(a), as rewritten by Chapter 449, Session Laws of 1989, reads as rewritten:

"(a) Notwithstanding any other provision of this Chapter, a candidate shall be exempted from the reports of contributions, loans, and expenditures required in G.S. 163-278.9(a), 163-278.40B, ~~278.40C, 278.40D, and 278.40E~~ 163-278.40C, 163-278.40D, and 163-278.40E if to further his campaign that candidate:

(1) Does not receive more than one thousand dollars ($1,000.00) in contributions, and
(2) Does not receive more than one thousand dollars ($1,000.00) in loans, and
(3) Does not spend more than one thousand dollars ($1,000.00).

To qualify for the exemption from those reports, the candidate's treasurer shall file a certification under oath that he does not intend to receive in contributions or loans or expend more than one thousand dollars ($1,000.00) to further his campaign. The certification shall be filed with the Board at the same time the candidate files his Organizational Report as required in G.S. 163-278.7, G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for his campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the ~~$500.00~~ $1,000 threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163-278.9 and 163-278.40B, ~~278.40C, 278.40D, and 278.40E~~ 163-278.40C, 163-278.40D, and 163-278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report

but for this section shall be included on the next report required after the intent changes or the threshold is exceeded."

Sec. 54. G.S. 147-69.2(c) is amended by deleting "G.S. 147-69.2(b)(6)", and substituting "G.S. 147-69.2(b)(8)".

Sec. 55. Section 36 of Chapter 168, Session Laws of 1989, is amended by deleting "G.S. 104G-6(14)", and substituting "G.S. 104G-6(a)(14)".

Sec. 56. The table set forth in G.S. 7A-60(a1) is amended by deleting from the heading of the left hand column the word "Judicial", and substituting the word "Prosecutorial".

Sec. 57. G.S. 20-16.1(b)(3) reads as rewritten:

"(3) Upon conviction of such offense outside the jurisdiction of this State the person so convicted may apply to the resident judge of the superior court of the district or set of districts as defined in G.S. 7A-41.1(a) in which he resides for limited driving privileges hereinbefore defined. Upon such application the judge shall have the authority to issue such limited driving privileges in the same manner as if he were the trial judge."

Sec. 58. G.S. 143B-501(3) reads as rewritten:

"(3) 'Judicial district' means ~~the districts prescribed in G.S. 7A-41~~ a district court district as defined in G.S. 7A-133."

Sec. 59. Section 2.1 of Chapter 617, Session Laws of 1989, is amended by deleting the phrase "General Statutes" and substituting the phrase "1981 Session Laws".

Sec. 60. G.S. 143B-426.40, as added by Chapter 239, Session Laws of 1989, is amended by adding immediately after "University of North Carolina" the words ",the Office of State Controller shall have the following powers and duties".

Sec. 61. Section 2 of Chapter 576, Session Laws of 1989 is amended by deleting "Chapter 561, Session Laws of 1989" and substituting "Chapter 561, Session Laws of 1987".

Sec. 62. Effective October 1, 1989, Article 27 of Chapter 66 of the General Statutes, as enacted by Chapter 631, Session Laws of 1989, is recodified as Article 28 of Chapter 66 of the General Statutes. G.S. 66-190 through G.S. 66-196 as enacted by that Chapter are recodified as G.S. 66-200 through G.S. 66-206, and the citation to "G.S. 66-192(d)" as contained in G.S. 66-194 as enacted by that Chapter is changed to "G.S. 66-202(d)".

Sec. 62.1. Effective January 1, 1990:

(1) Article 27 of Chapter 66 of the General Statutes, as enacted by Chapter 746, Session Laws of 1989, is recodified as Article 29 of Chapter 66 of the General Statutes;

(2) G.S. 66-189 through G.S. 66-196 as enacted by that Chapter are recodified as G.S. 66-209 through G.S. 66-216;

(3) G.S. 66-191(a)(2) as recodified as G.S. 66-211(a)(2) is amended by deleting "ARTICLE 27", and substituting "ARTICLE 29"; and

(4) G.S. 66-193(c) as recodified to be G.S. 66-213(c) by this section is amended by deleting "G.S. 66-192(e)", and substituting "G.S. 66-212(e)."

Sec. 63. G.S. 143B-181.10(c), as rewritten by Section 96(a) of Chapter 500, Session Laws of 1989 is amended by deleting "shilled", and substituting "skilled".

Sec. 64. Section 110(b) of Chapter 500, Session Laws of 1989 is amended by deleting "Ecomonic", and substituting "Economic".

Sec. 65. Section 74(g)(2) of Chapter 830, Session Laws of 1987, as enacted by Section 113(a) of Chapter 500, Session Laws of 1989, is amended by deleting "facitilities" and substituting "facilities".

Sec. 66. G.S. 20-127 is amended by adding a new subsection to read:

"(i) Subsections (d) through (g) of this section do not apply to law-enforcement K-9 vehicles and films used to darken windows on those units."

Sec. 67. Chapter 611, Session Laws of 1989 is amended by adding a new section to read:

"Sec. 4.1. The following acts having served the purposes for which they were enacted or having been consolidated into this act are expressly repealed:

Chapter 234, Private Laws of 1935
Chapter 575, Session Laws of 1949
Chapter 1113, Session Laws of 1957
Chapter 894, Session Laws of 1963
Chapter 1220, Session Laws of 1963
Chapter 519, Session Laws of 1965."

Sec. 68. G.S. 90-95(h)(3a), as enacted by Chapter 690, Session Laws of 1989 is recodified as G.S. 90-95(h)(3b).

Sec. 68.1. (a) G.S. 105-151.19 as enacted by Section 1.22 of Chapter 728, Session Laws of 1989, reads as rewritten:

"§ *105-151.19. Credit for North Carolina dividends.*

There is allowed as a credit against the tax imposed by this Division an amount equal to six percent (6%) of the amount of dividends received by the taxpayer during the taxable year from stock issued by a qualified corporation, up to a maximum credit of three hundred dollars ($300.00) per taxpayer for the taxable year. A corporation is a qualified corporation if fifty percent (50%) or more of the dividends from stock issued by the corporation would be deductible by a

corporate shareholder for the taxable year under the provisions of G.S. 105-130.7(1), (2), (3), ~~or (3a),~~ (3a), or (5) except that no credit shall be allowed for dividends issued with respect to a taxable period during which the corporation is an S Corporation subject to the provisions of Division I-S of this Article.

This credit applies only with respect to dividends received while the taxpayer was a resident of this State. In the case of a married couple filing a joint return where both spouses received dividends during the taxable year, the three hundred dollar ($300.00) maximum applies separately to each spouse's dividends for a potential total credit of six hundred dollars ($600.00) for the couple. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer."

(b) This section is effective for taxable years beginning on or after January 1, 1989.

Sec. 68.2. G.S. 136-176(a)(2), as enacted by Section 1.1 of Chapter 692, Session Laws of 1989, reads as rewritten:

"(2) Motor vehicle use tax deposited in the Fund under ~~G.S. 105-171~~ G.S. 105-173."

Sec. 69. Effective July 1, 1990, G.S. 55-13-25(b), as enacted by Chapter 265, Session Laws of 1989, reads as rewritten:

"(b) The offer of payment must be accompanied by:

(1) The corporation's most recent available balance sheet as of the end of a fiscal year ending not more than 16 months before the date of offer of payment, an income statement for that year, a statement of ~~changes in shareholders' equity~~ cash flows for that year, and the latest available interim financial statements, if any;

(2) A statement of the corporation's estimate of the fair value of the shares;

(3) An explanation of how the interest was calculated;

(4) A statement of the dissenter's right to demand payment under G.S. 55-13-28; and

(5) A copy of this Article."

Sec. 70. Effective January 1, 1990, G.S. 58-807 as enacted by Chapter 425, Session Laws of 1989, reads as rewritten:

"*§ 58-807. Duration of liability for assessment.*

Every subscriber of a domestic reciprocal having contingent assessment liability shall be liable for and shall pay his share of any assessment computed in accordance with this Part, if, while the policy is in force or within one year after its termination, the subscriber is notified (i) by the attorney of his intention to levy the assessment or (ii) that delinquency proceedings have been commenced against the

reciprocal under the provisions of Article ~~17A or~~ 46 of this Chapter, and the Commissioner or receiver intends to levy an assessment."

Sec. 71. Effective January 1, 1990, G.S. 58-809(b) as enacted by Section 1 of Chapter 425, Session Laws of 1989, reads as rewritten:

"(b) If the attorney fails to make the assessment within 30 days after the Commissioner orders him to do so, or if the deficiency is not fully made up within 60 days after the date the assessment is made, delinquency proceedings may be instituted and conducted against the insurer as provided in Article ~~17A or~~ 46 of this Chapter."

Sec. 72. G.S. 58-155.45(5), as rewritten by Section 2 of Chapter 206, Session Laws of 1989, reads as rewritten:

"(5) 'Insolvent insurer' means (i) an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of ~~G.S. 58-155.11~~ Article 46 of this Chapter, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order."

Sec. 72.1. G.S. 58-656(7), as enacted by Section 1 of Chapter 452, Session Laws of 1989, reads as rewritten:

"(7) Without first obtaining the written consent of the Commissioner pursuant to G.S. 58-155.1, the insurer has (i) transferred, or attempted to transfer, in a manner contrary to Article ~~12A~~ 43 of this Chapter, substantially its entire property or business, or (ii) has entered into any transaction, the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person."

Sec. 72.2. Section 3.1 of Chapter 722, Session Laws of 1989 is amended by deleting "Section 36 of Chapter 485 of the 1989 Session Laws reads as rewritten:

'Sec. 36. G.S. 58-79.1(c) is amended by adding a new subdivision to read:", and substituting: "G.S. 58-79.1(c) as enacted by Section 36 of Chapter 485, Session Laws of 1989 reads as rewritten:".

Sec. 73. Section 1 of Chapter 225, Session Laws of 1989, is amended by deleting "G.S. 122C-271 reads as rewritten:" and substituting "G.S. 122C-271(b) reads as rewritten:".

Sec. 74. Section 2 of Chapter 225, Session Laws of 1989, is amended by deleting "G.S. 122C-263 reads as rewritten:" and substituting "G.S. 122C-263(d) reads as rewritten:".

Sec. 74.1. (a) G.S. 20-79(d) reads as rewritten:

"(d) ~~No manufacturer of or dealer in~~ Dealer's license plates may be used on motor vehicles~~, trailers or semitrailers shall cause or permit any such vehicle~~ owned by, or assigned to, duly licensed motor vehicle dealers of this State when ~~such person or by any person in his employ, which is in the personal use of such person or employee, to be~~ operated ~~or moved upon a public~~ on the highways of this State by the dealer, corporate officers of the dealership, salespersons or full-time employees of the dealership, and any designated part-time employees of the dealership; ~~with a 'dealer' plate attached to such vehicle~~ provided, the vehicle is subject to the proof of financial responsibility requirements of Article 9A of this Chapter. A dealership owner who desires to use dealer's license plates as herein provided shall make application on a form provided by the Division of Motor Vehicles and pay the annual amount set in G.S. 20-87(7)."

(b) This section shall become effective October 1, 1989, and shall not affect pending litigation.

Sec. 74.2. Effective October 1, 1989, G.S. 20-87(7) reads as rewritten:

"(7) Manufacturers and Motor Vehicle Dealers.--Manufacturers and dealers in motor ~~vehicles, trailers and semitrailers for license and for one set of dealer's plates for each place of business licensed under Article 12 of Chapter 20 of the General Statutes shall pay the sum of thirty-eight dollars ($38.00), and for each additional set of dealer's plates the sum of three dollars ($3.00).~~ vehicles shall pay a fee of one-half of the amount that would otherwise be payable under this section for each set of plates."

Sec. 74.3. Effective October 1, 1989, G.S. 20-87(8) reads as rewritten:

"(8) Driveaway Companies.-- Any ~~person, firm or corporation~~ person engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay ~~as a registration fee and for one set of plates one hundred twenty-eight dollars ($128.00) and for each additional set of plates six dollars ($6.00)~~ a fee of one-half of the amount that would otherwise be payable under this section for each set of plates."

Sec. 74.4. Effective October 1, 1989, G.S. 105-164.4(a)(1b), as enacted by Section 3.3 of Chapter 692, Session Laws of 1989, reads as rewritten:

"(1b) At the rate of two percent (2%) of the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the ~~purchaser,~~ purchaser, not to exceed one thousand five hundred dollars ($1,500)."

Sec. 74.5. Effective January 1, 1990, G.S. 20-88.01, as amended by Section 6.1 of Chapter 692, Session Laws of 1989, reads as rewritten:

"*§ 20-88.01. Revocation of registration for failure to register for or comply with road tax.*

The Secretary of Revenue may notify the Commissioner of those motor vehicles that are registered or are required to be registered under Article 36B of Chapter 105 and ~~as appropriate,~~ whose owners or ~~lessees~~ lessees, as appropriate, are not in compliance with Article 36A or 36B of Chapter 105. When notified, the Commissioner shall withhold or revoke the registration plate for the vehicle."

Sec. 74.6. G.S. 136-176(a)(3), as enacted by Section 1.1 of Chapter 692, Session Laws of 1989, reads as rewritten:

"(3) Revenue from the certificate of title fee and other fees payable ~~when a certificate of title is issued for a motor vehicle~~ under G.S. 20-85."

Sec. 74.7. G.S. 136-17.2A(c), as enacted by Section 1.4 of Chapter 692, Session Laws of 1989, is amended by redesignating subdivision (3) as subdivision (2).

Sec. 74.8. Effective October 1, 1989, G.S. 105-174, as enacted by Section 4.1 of Chapter 692, Session Laws of 1989, reads as rewritten:

"*§ 105-174. Penalties and remedies.*

(a) Penalties. The ~~penalties that apply to a failure to pay State sales and use taxes apply to a failure to pay the tax levied by this Article~~ penalty for bad checks in G.S. 105-236(1) applies to a check offered in payment of the tax imposed by this Article. In addition, if a check offered to the Division in payment of the tax imposed by this Article is returned unpaid and the tax for which the check was ~~offered~~ offered, plus the penalty imposed under G.S. 105-236(1), is not paid within 30 days after the Commissioner demands its payment, the Commissioner may revoke the registration plate of the vehicle for which a certificate of title was issued when the check was offered.

(b) Unpaid Taxes. The remedies for collection of taxes in G.S. 20-99 apply to the taxes levied by this Article and collected by the Commissioner.

(c) Appeals. A taxpayer who disagrees with the presumed value of a motor vehicle must pay the tax based on the presumed value, but may appeal the value to the Commissioner. A taxpayer who appeals the value must provide two estimates of the value of the vehicle to the Commissioner. If the Commissioner finds that the value of the vehicle is less than the presumed value of the vehicle, the Commissioner shall refund any overpayment of tax made by the taxpayer with interest at the rate specified in G.S. 105-241.1 from the date of the overpayment.

~~In applying the provisions of Article 9 of this Chapter to the tax levied by this Article, the Commissioner shall exercise the power conferred upon the Secretary. A taxpayer who appeals the tax imposed by this Article shall appeal to the Commissioner or the Commissioner's designee instead of to the Secretary.~~"

Sec. 74.9. Effective October 1, 1989, G.S. 105-170(a), as enacted by Section 4.1 of Chapter 692, Session Laws of 1989, reads as rewritten:

"(a) Full Exemptions. The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor ~~vehicle~~ vehicle:

(1) To ~~to~~ the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.

(2) To either a manufacturer, as defined in G.S. 20-285, or a motor vehicle retailer for the purpose of resale."

Sec. 74.10. Effective October 1, 1989, G.S. 105-170(b)(4), as enacted by Section 4.1 of Chapter 692, Session Laws of 1989, reads as rewritten:

"(4) To ~~one of the following for the purpose of resale:~~

~~a. A motor vehicle retailer.~~

~~b. A~~ a secured party who has filed a security interest in the motor vehicle with the Department of the Secretary of State."

Sec. 74.11. Effective October 1, 1989, G.S. 20-85(a), as amended by Section 2.1 of Chapter 692, Session Laws of 1989, is amended by adding a new subdivision to read:

"(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-285, or a motor vehicle retailer for the purpose of resale..... 10.00."

Sec. 74.12. G.S. 136-44.8, as enacted by Section 1.18 of Chapter 692, Session Laws of 1989, is recodified as G.S. 136-28.7.

Sec. 74.13. Effective October 1, 1989, G.S. 105-167(b), as enacted by Section 4.1 of Chapter 692, Session Laws of 1989, reads as rewritten:

"(b) Retail Value. The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle, including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a motor vehicle taken in trade as a partial payment for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a seller who is not a retailer is the market value of the vehicle, ~~value of the vehicle set in a schedule of values adopted by the Commissioner,~~ less the amount of any allowance given by the seller for a motor vehicle taken in trade as a partial payment for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the ~~vehicle~~ vehicle. The market value of a vehicle is presumed to be the value of the vehicle set in a schedule of values adopted by the Commissioner."

Sec. 74.14. G.S. 136-28.7(a), as enacted by Section 1.18 of Chapter 692, Session Laws of 1989, is rewritten to read:

"(a) The Department of Transportation shall require that every contract for construction or repair necessary to carry out the provisions of this Chapter shall contain a provision requiring that ~~steel and cement used or supplied in the performance of the contract or any subcontract thereunder are produced in the United States~~ all steel and cement permanently incorporated into the construction or repair project be produced in the United States."

Sec. 74.15. G.S. 136-28.7, as enacted by Section 1.18 of Chapter 692, Session Laws of 1989, is amended by designating subsection (c) as subsection (d) and inserting a new subsection (c) to read:

"(c) The Department of Transportation shall apply this section consistent with the requirements in 23 C.F.R. § 635.410(b)(4)."

Sec. 74.16. G.S. 136-12(b), as amended by Section 1.3 of Chapter 692, Session Laws of 1989, reads as rewritten:

"(b) At least ~~25~~ 30 days before it approves a Transportation Improvement Program in accordance with G.S. 143B-350(f)(4) or approves interim changes to a Transportation Improvement Program, the Department shall submit the proposed Transportation Improvement Program or proposed interim changes to a Transportation Improvement Program to the following members and staff of the General Assembly:

(1) The Speaker and the Speaker Pro Tempore of the House of Representatives;

(2) The Lieutenant Governor and the President Pro Tempore of the Senate;
(3) The Chairs of the House and Senate Appropriations Committees;
(4) Each member of the Joint Legislative Highway Oversight Committee; and
(5) The Fiscal Research Division of the Legislative Services Commission."

Sec. 74.17. Chapter 480 of the Session Laws of 1989 is amended by adding a new section to read:

"Sec. 3.1. Contracts awarded pursuant to the separate prime contract system during the period beginning on June 28, 1989 and ending December 31, 1989 are not hereby invalidated for noncompliance with G.S. 143-128(c)."

Sec. 75. G.S. 130A-415, as rewritten by Chapter 222, Session Laws of 1989, reads as rewritten:

"§ *130A-415. Unclaimed bodies; disposition.*

(a) Any person, including officers, employees and agents of the State or of any unit of local government in the State, undertakers doing business within the State, hospitals, nursing homes or other institutions, having physical possession of a dead body shall make reasonable efforts to contact relatives of the deceased or other persons who may wish to claim the body for final disposition. If the body remains unclaimed for final disposition for 10 days, the person having possession shall notify the Commission of Anatomy. Upon request of the Commission of Anatomy, the person having possession shall deliver the dead body to the Commission of Anatomy at a time and place specified by the Commission of Anatomy or shall permit the Commission of Anatomy to take and remove the body.

(b) All dead bodies not claimed for final disposition within 10 days of the decedent's death may be received and delivered by the Commission of Anatomy pursuant to the authority contained in G.S. 143B-204 and this Part and in accordance with the rules of the Commission of Anatomy. Upon receipt of a body by the Commission of Anatomy all interests in and rights to the unclaimed dead body shall vest in the Commission of Anatomy. The recipient to which the Commission of Anatomy delivers the body shall pay all expenses for the embalming and delivery of the body, and for the reasonable expenses arising from efforts to notify relatives or others.

(b1) The 10-day period referenced in subsections (a) and (b) of this section may be shortened by the county director of social services upon determination that a dead body will not be claimed for final disposition within the 10-day period.

(c) Should the Commission of Anatomy decline to receive a dead body, the person with possession shall inform the director of social services of the county in which the body is located. The director of social services of that county shall arrange for prompt final disposition of the body, either by cremation or burial. Reasonable costs of disposition and of efforts made to notify relatives and others shall be considered funeral expenses and shall be paid in accordance with G.S. 28A-19-6 and G.S. 28A-19-8. If those expenses cannot be satisfied from the decedent's estate, they shall be borne by the decedent's county of residence. If the deceased is not a resident of this State, or if the county of residence is unknown, those expenses shall be borne by the county in which the death occurred.

(d) No autopsy shall be performed on an unclaimed body without the written consent of the Commission of Anatomy except that written consent is not required for an autopsy performed pursuant to Part 2 of this Article.

(e) Due caution shall be taken to shield the unclaimed body from public view.

(f) Notwithstanding anything contained in this section, an unclaimed body shall not mean a dead body for which the deceased has made a gift pursuant to Part 3 of this Article.

(g) Nothing in this Part shall require the officers, employees or agents of a county to notify the Commission of Anatomy regarding the bodies of minors who were in the custody of the county at the time of death and whose final disposition will be arranged by the county. In the absence of notification, the expenses of the final disposition shall be a charge upon the county having custody.

(h) The provisions of this Part shall not apply to bodies within the jurisdiction of the medical examiner under G.S. 130A-383 or 130A-384.

(i) In addition to the other duties of the Commission of Anatomy, when the Commission of Anatomy is notified by the Lifeguardianship Council of the Association of Retarded Citizens of North Carolina, Inc., that the Council intends to claim a body, the Commission shall release the body to the Council. The Lifeguardianship Council shall notify the Commission of Anatomy within 24 hours after death of its intent to claim a body for burial or other humane and caring disposition."

Sec. 75.1. Effective October 1, 1989, and applying to appeals filed on and after that date, G.S. 90-14.11 reads as rewritten:

"§ *90-14.11. ~~Appeal to Supreme Court;~~ Appeal; appeal bond.*

Any party to the review proceeding, including the Board, may appeal ~~to the Supreme Court~~ from the decision of the superior court under rules of procedure applicable in other civil cases. No appeal

bond shall be required of the Board. The appealing party may apply to the superior court for a stay of that court's decision or a stay of the Board's decision, whichever shall be appropriate, pending the outcome of the ~~appeal to the Supreme Court.~~ appeal."

Sec. 75.2. Effective January 1, 1990, G.S. 105A-2(1)j, as rewritten by Chapters 539 and 699, Session Laws of 1989, reads as rewritten:

"j. State facilities as listed in G.S. 122C-181(a), School for the Deaf at Morganton, North Carolina Sanatorium at McCain, Western Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill under Chapter 143, Article 7; Governor Morehead School under Chapter 115, Article 40; Central North Carolina School for the Deaf under Chapter 115, Article 41; Wright School for Treatment and Education of Emotionally Disturbed Children under Chapter 122C; ~~122C;~~ and these same institutions by any other names by which they may be known in the future;".

Sec. 75.3. G.S. 163-132.5A, as amended by Section 3 of Chapter 440, Session Laws of 1989, reads as rewritten:

"*§ 163-132.5A. Precinct boundaries.*

~~(a)~~ Whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through the U.S. Census Bureau's 1988 Boundary and Annexation Survey and ending October 31, 1989, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the annexed area is automatically moved into the 'city precinct', provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts. The county board of elections may delay the effective date of any change under this subsection to a date not later than January 1, 1992.

~~(b) This section does not apply when the entire area of contiguity between the city and the area being annexed is a township boundary, a county boundary, a visible feature used or expected to be used as a census block boundary in the 1990 census, or a combination of those boundaries.~~"

Sec. 75.4. G.S. 143-215.94P(b)(5), as enacted by Section 5 of Chapter 656 of the 1989 Session Laws, reads as rewritten:

"(5) Discharge or leaking of oil or natural gas from a private pleasure boat or commercial fishing vessel having a fuel capacity of less than ~~5,000~~ 500 gallons."

Sec. 75.5. Part 2B of Article 21A of Chapter 143 of the General Statutes (G.S. 143-215.94N through G.S. 143-215.94W), as enacted by Section 5 of Chapter 656 of the 1989 Session Laws, is recodified as Part 2C of Article 21A of Chapter 143 of the General Statutes (G.S. 143-215.94AA through G.S. 143-215.94JJ). The Revisor of Statutes shall correct every reference to any section of the General Statutes which is recodified by this section.

Sec. 76. Except as otherwise provided herein, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 691 **CHAPTER 771**

AN ACT TO PROVIDE FOR A COMMERCIAL DRIVER LICENSE SYSTEM, ENDORSEMENTS TO A COMMERCIAL DRIVER LICENSE, AND DISQUALIFYING OFFENSES FOR A COMMERCIAL DRIVER LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01 reads as rewritten:

"*§ 20-4.01. Definitions.*

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(0.1) Alcohol. -- ~~Ethyl~~ Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(0.2) Alcohol Concentration. -- The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

(1) Business District. -- The territory prescribed as such by ordinance of the Board of Transportation.

(2) Canceled. -- As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or fraud is void and terminated.

(3) Repealed by Session Laws 1979, c. 667, s. 1, effective January 1, 1981.

(3a) Chemical Analysis. -- A test of the breath or blood of a person to determine his alcohol concentration, performed in accordance with G.S. 20-139.1. The term 'chemical analysis' includes duplicate or sequential analyses when

necessary or desirable to insure the integrity of test results.

(3b) Chemical Analyst. -- A person granted a permit by the Department of Human Resources under G.S. 20-139.1 to perform chemical analyses.

(3c) ~~Commercial Motor Vehicle. -- A vehicle: (a) which requires the driver to possess a valid Class A or Class B driver's license, or a similar driver's license issued by another state; or (b) which is a school bus, school activity bus, church bus, farm bus, ambulance, volunteer transportation vehicle, activity bus operated for a nonprofit organization when the activity bus is operated for a nonprofit purpose, or a fire-fighting vehicle or combination of vehicles when operated by any volunteer member of a municipal or rural fire department in the performance of his duty.~~ Commercial Driver License (CDL). -- A license issued in accordance with the requirements of this Chapter to an individual which authorizes that individual to drive a class of commercial motor vehicle. A 'nonresident commercial driver license (NRCDL)' is issued by a state to an individual who resides in a foreign jurisdiction.

(3d) Commercial Motor Vehicle. -- A motor vehicle designed or used to transport passengers or property:

a. If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or a lesser rating as determined by federal or State regulation;

b. If the vehicle is designed to transport 16 or more passengers, including the driver; or

c. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

(4) Commissioner. -- The Commissioner of Motor Vehicles.

(5) Dealer. -- Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers or semitrailers in this State, having an established place of business in this State and being subject to the tax levied by G.S. 105-89.

The terms 'motor vehicle dealer,' 'new motor vehicle dealer,' and 'used motor vehicle dealer' shall have the meaning set forth in G.S. 20-286.

(5a) Disqualification. -- A withdrawal of the privilege to drive a commercial motor vehicle.

(6) Division. -- The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

(7) Driver. -- The operator of a vehicle, as defined in subdivision (25). The terms 'driver' and 'operator's and their cognates are synonymous.

(7a) Employer. -- Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(8) Essential Parts. -- All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(9) Established Place of Business. -- Except as provided in G.S. 20-286, the place actually occupied by a dealer or manufacturer at which a permanent business of bargaining, trading, and selling motor vehicles is or will be carried on and at which the books, records, and files necessary and incident to the conduct of the business of automobile dealers or manufacturers shall be kept and maintained.

(10) Explosives. -- Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous ~~presses [pressures]~~ pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(11) Farm Tractor. -- Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(12) Foreign Vehicle. -- Every vehicle of a type required to be registered hereunder brought into this State from another state, territory, or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this State.

(12a) Gross Vehicle Weight Rating (GVWR). -- The ~~gross vehicle weight is the registered or declared weight of the vehicle.~~ value specified by the manufacturer as the maximum loaded weight of a single or combination

vehicle, or the registered gross weight of the vehicle, whichever is greater. ~~If no weight is registered or declared, then the gross vehicle weight is the actual weight of the vehicle~~ The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units.

(12b) Hazardous Materials. -- Materials designated as hazardous by the United States Secretary of Transportation under 49 U.S.C. § 1803.

(13) Highway. -- The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms 'highway' and 'street' and their cognates are synonymous.

(14) House Trailer. -- Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle.

(14a) Impairing Substance. -- Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

(15) Implement of Husbandry. -- Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

(16) Intersection. -- The area embraced within the prolongation of the lateral curblines or, if none, then the lateral edge of roadway lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(17) License. -- Any driver's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this State including:

a. Any temporary license or learner's permit;

b. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

c. Any nonresident's operating privilege.

(18) Local Authorities. -- Every county, municipality, or other territorial district with a local board or body having authority to adopt local police regulations under the Constitution and laws of this State.

(19) Manufacturer. -- Every person, resident, or nonresident of this State, who manufactures or assembles motor vehicles.

(20) Manufacturer's Certificate. -- A certification on a form approved by the Division, signed by the manufacturer, indicating the name of the person or dealer to whom the therein-described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Division may require.

(21) Metal Tire. -- Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(21a) Moped. -- A type of passenger vehicle as defined in G.S. 20-4.01(27).

(22) Motorcycle. -- A type of passenger vehicle as defined in G.S. 20-4.01(27).

(23) Motor Vehicle. -- Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in G.S. 20-4.01(27)d1.

(24) Nonresident. -- Any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country.

(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. Second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter. A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

(25) Operator. -- A person in actual physical control of a vehicle which is in motion or which has the engine running. The terms 'operator' and 'driver' and their cognates are synonymous.

(25a) Out of Service Order. -- A temporary prohibition against driving a commercial motor vehicle.

(26) Owner. -- A person holding the legal title to a vehicle, or in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this Chapter. For the purposes of this Chapter, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.

(27) Passenger Vehicles. --

a. Excursion passenger vehicles. -- Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. -- Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated ~~on behalf of any employer~~ pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. -- Vehicles operated under a franchise certificate issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons or property for compensation.

d. Motorcycles. -- Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. -- Vehicles having two or three wheels and operable pedals and equipped with a motor which does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

e. U-drive-it passenger vehicles. -- Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. -- Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. -- All other passenger vehicles not included in the above definitions.

(28) Person. -- Every individual, firm, partnership, association, corporation, governmental agency, or combination thereof of whatsoever form or character.

(29) Pneumatic Tire. -- Every tire in which compressed air is designed to support the load.

(30) Private Road or Driveway. -- Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

(31) Property-Hauling Vehicles. --

a. Exempt for-hire vehicles. -- Vehicles used for the transportation of property for hire but not licensed as common carriers or contract carriers of property under franchise certificates or permits issued by the

Utilities Commission or by the Interstate Commerce Commission; provided, that the term 'for hire' shall include every arrangement by which the owner of a vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the following exemptions:

1. The transportation of farm crops or products, including logs, bark, pulp, and tannic acid wood delivered from farms and forest to the first or primary market, and the transportation of wood chips from the place where wood has been converted into chips to their first or primary market.
2. The transportation of perishable foods which are still owned by the grower while being delivered to the first or primary market by an operator who has not more than one truck, truck-tractor, or trailer in a for-hire operation.
3. The transportation of merchandise hauled for neighborhood farmers incidentally and not as a regular business in going to and from farms and primary markets.
4. The transportation of T.V.A. or A.A.A. phosphate and/or agricultural limestone in bulk which is furnished as a grant of aid under the United States Agricultural Adjustment Administration.
5. The transportation of fuel for the exclusive use of the public schools of the State.
6. Vehicles whose sole operation in carrying the property of others is limited to the transportation of the United States mail pursuant to a contract, or the extension or renewal of such contract.
7. Vehicles leased for a term of one year or more to the same person when used exclusively by such person in transporting his own property.

b. Common carrier of property vehicles. -- Vehicles used for the transportation of property certified by the Utilities Commission or the Interstate Commerce Commission as common carriers.

c. Private hauler vehicles. -- Vehicles used for the transportation of property not falling within one of the above-defined classifications; provided, self-propelled vehicles equipped with permanent

living and sleeping facilities used for camping activities shall be classified as private passenger vehicles.

d. Semitrailers. -- Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.

e. Trailers. -- Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle, including 'pole trailers' or a pair of wheels used primarily to balance a load rather than for purposes of transportation.

f. Contract carrier of property vehicles. -- Vehicles used for the transportation of property under a franchise permit of a regulated contract carrier issued by the Utilities Commission or the Interstate Commerce Commission.

(31a) Provisional Licensee. -- A person under the age of 18 years.

(32) Public Vehicular Area. -- Any area within the State of North Carolina that is generally open to and used by the public for vehicular traffic, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of:

a. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions; or

b. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space for customers, patrons, or the public; or

c. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13.)

The term 'public vehicular area' shall also include any beach area used by the public for vehicular traffic as well as any road opened to vehicular traffic within or leading to a subdivision for use by subdivision residents, their guests, and members of the public, whether or not the subdivision roads have been offered for dedication to the public. The term 'public vehicular area' shall not be construed to mean any private property not generally open to and used by the public.

(33) (a) Flood Vehicle.-A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

(b) Non-U.S.A. Vehicle.-A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

(c) Reconstructed Vehicle.-A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.

(d) Salvage Motor Vehicle.-Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA pricing Guide Book or other publications approved by the Commissioner.

(e) Salvage Rebuilt Vehicle.-A salvage vehicle that has been rebuilt for title and registration.

(f) Junk Vehicle.-A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

(33a) Relevant Time after the Driving. -- Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

(34) Resident. -- Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six

months shall raise no presumption that the person is not a resident of this State.

(35) Residential District. -- The territory prescribed as such by ordinance of the Department of Transportation.

(36) Revocation or Suspension. -- Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms 'revocation' or 'suspension' or a combination of both terms shall be used synonymously.

(37) Road Tractors. -- Vehicles designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(38) Roadway. -- That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term 'roadway' as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(39) Safety Zone. -- Traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(40) Security Agreement. -- Written agreement which reserves or creates a security interest.

(41) Security Interest. -- An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is 'perfected' when it is valid against third parties generally.

(41a) Serious Traffic Violation. -- A conviction when operating a commercial motor vehicle of:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit;

b. Careless and reckless driving; or

c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.

(42) Solid Tire. -- Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(43) Specially Constructed Vehicles. -- Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.

(44) Special Mobile Equipment. -- Every truck, truck-tractor, industrial truck, trailer, or semitrailer on which have been permanently attached cranes, mills, well-boring apparatus, ditch-digging apparatus, air compressors, electric welders, or any similar type apparatus or which have been converted into living or office quarters, or other self-propelled vehicles which were originally constructed in a similar manner which are operated on the highway only for the purpose of getting to and from a nonhighway job and not for the transportation of persons or property or for hire. This shall also include trucks on which special equipment has been mounted and used by American Legion or Shrine Temples for parade purposes, trucks or vehicles privately owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes, and vehicles on which are permanently mounted feed mixers, grinders, and mills although there is also transported on the vehicle molasses or other similar type feed additives for use in connection with the feed-mixing, grinding, or milling process.

(45) State. -- A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, or a province of Canada.

(46) Street. -- A highway, as defined in subdivision (13). The terms 'highway' and 'street' and their cognates are synonymous.

(47) Suspension. -- Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms 'revocation' or 'suspension' or a combination of both terms shall be used synonymously.

(48) Truck Tractors. -- Vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(48a) Under the Influence of an Impairing Substance. -- The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.

(49) Vehicle. -- Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment.

(50) Wreckers. -- Vehicles with permanently attached cranes used to move other vehicles; provided, that said wreckers shall be equipped with adequate brakes for units being towed."

Sec. 2. Chapter 20 of the General Statutes is amended by adding a new article to read.

"ARTICLE 2C.

"Commercial Driver License.

"*§ 20-37.10. Title of Article.*

This Article may be cited as the Commercial Driver License Act.

"*§ 20-37.11. Purpose.*

The purpose of this Article is to implement the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. Chapter 36, and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

(1) Permitting commercial drivers to hold one license;

(2) Disqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses; and

(3) Strengthening commercial driver licensing and testing standards.

To the extent that this Article conflicts with general driver licensing provisions, this Article prevails. Where this Article is silent, the general driver licensing provisions apply.

"*§ 20-37.12. Commercial driver license required.*

(a) On or after April 1, 1992, no person shall operate a commercial motor vehicle on the highways of this State unless he has first been issued and is in immediate possession of a commercial driver license with applicable endorsements valid for the vehicle he is driving; provided, a person may operate a commercial motor vehicle after being issued and while in possession of a commercial driver learner's permit and while accompanied by the holder of a commercial driver license valid for the vehicle being driven.

(b) No person shall drive a commercial motor vehicle on the highways of this State while his driving privilege is revoked, suspended, cancelled, subject to a disqualification, or in violation of an out-of-service order.

(c) No person who drives a commercial motor vehicle may have more than one driver license.

(d) Any person who is not a resident of this State, who has been issued a commercial driver license by his state of residence, who has that license in his immediate possession, whose privilege to drive any motor vehicle is not suspended, revoked, or cancelled, and who has not been disqualified from driving a commercial motor vehicle shall be permitted without further examination or licensure by the Division to drive a commercial motor vehicle in this State.

(e) Any person who takes up residence in this State on a permanent basis is exempt from the provisions of this section for 30 days from the date residence is established if he is properly licensed to operate a commercial motor vehicle in the jurisdiction of which he is a former resident. The Commissioner may establish by rule the conditions under which the test requirements for a commercial driver license may be waived for any person applying for a license pursuant to this subsection.

"*§ 20-37.13. Commercial driving license qualification standards.*

(a) No person shall be issued a commercial driver license unless he:

(1) Is a resident of this State;

(2) Is 21 years of age;

(3) Has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts G and H; and

(4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements of this Chapter or federal regulation.

The tests shall be prescribed and conducted by the Division of Motor Vehicles. Provided, a person who is at least 18 years of age may be issued a commercial driver license if he is exempt from, or not subject to, the age requirements of the federal Motor Carrier Safety Regulations contained in 49 C.F.R., Part 391, as adopted by the Division.

(b) The Division may permit a person, including an agency of this or another state, an employer, a private driver training facility, or an agency of local government, to administer the skills test specified by this section, provided:

(1) The test is the same as that administered by the Division; and

(2) The third party has entered into an agreement with the Division which complies with the requirements of 49 C.F.R., Part 383.75. The Division may charge a fee to applicants for third-party testing authority in order to investigate the applicants' qualifications and to monitor their program as required by federal law.

(c) Prior to April 1, 1992, the Division may waive the skills test for applicants licensed at the time they apply for a commercial driver license if:

(1) The applicant has not, and certifies that he has not, at any time during the two years immediately preceding the date of application:

a. Had more than one driver license, except during the 10-day period beginning on the date he is issued a driver license, or unless, prior to December 31, 1989, he was required to have more than one license by a State law enacted prior to June 1, 1986;

b. Had any driver license or driving privilege suspended, revoked, or cancelled;

c. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17; or

d. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; and

(2) The applicant certifies, and provides satisfactory evidence, that he is regularly employed in a job requiring the operation of a commercial motor vehicle, and he either:

a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or

b. Has operated for at least two years immediately preceding the application date, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.

(d) A commercial driver license or learner's permit shall not be issued to a person while he is subject to a disqualification from driving a commercial motor vehicle, or while his driver license is suspended, revoked, or cancelled in any state; nor shall a commercial driver license be issued by any other state unless he first surrenders all other driver licenses, which must be returned to the issuing states for cancellation.

(e) A commercial driver learner's permit may be issued to an individual who holds a valid Class C driver license who has passed the necessary tests required for that license. The permit is valid for a period not to exceed six months and may be renewed or reissued only once within a two-year period.

"*§ 20-37.14. Nonresident commercial driver license.*

The Division may issue a nonresident commercial driver license (NRCDL) to a resident of a foreign jurisdiction if the United States Secretary of Transportation has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction do not meet the testing standards established in 49 C.F.R., Part 383. The word 'Nonresident' must appear on the face of the NRCDL. An applicant must surrender any NRCDL issued by another state. Prior to issuing a NRCDL, the Division shall establish the practical capability of revoking, suspending, or cancelling the NRCDL and disqualifying that person with the same conditions applicable to the commercial driver license issued to a resident of this State.

"*§ 20-37.15. Application for commercial driver license.*

(a) The application for a commercial driver license must include the following:

(1) The full name, current mailing address, and current residence address of the applicant;

(2) A physical description of the person including sex, height, and eye and hair color;

(3) Date of birth;

(4) The applicant's social security number;

(5) The applicant's signature;

(6) The applicant's color photograph;
(7) Certifications including those required by 49 C.F.R., Part 383.71(a);
(8) A consent to release driving record information; and
(9) Any other information required by the Division.

The application must be accompanied by a nonrefundable application fee of twenty dollars ($20.00). This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c).

(b) When the holder of a commercial driver license changes his name, mailing address, or residence address, an application for a duplicate shall be made as provided in G.S. 20-7.1 and a fee paid as provided in G.S. 20-14.

"*§ 20-37.16. Content of license; classifications and endorsements; fees.*

(a) The commercial driver license must be marked 'Commercial Driver License' or 'CDL' and shall, to the maximum extent practicable, be tamper proof. It must include:

(1) The person's name and residential address;
(2) The person's color photograph;
(3) A physical description of the person including sex, height, eye color, and hair color;
(4) The person's date of birth;
(5) The person's social security number or any number or identifier deemed appropriate by the Division;
(6) The person's signature;
(7) The class of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;
(8) The name of this State; and
(9) The dates between which the license is valid.

(b) Commercial driver licenses may be issued with the following classifications, endorsements, and restrictions; the holder of a valid commercial driver license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles except motorcycles. Vehicles that require an endorsement shall not be driven unless the proper endorsement appears on the license.

Class A - Any combination of vehicles with a gross vehicle weight rating, GVWR, of 26,001 pounds or more, provided the GVWR of the vehicle or vehicles being towed is in excess of 10,000 pounds.

Class B - Any single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds.

Class C - Any single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds comprising:

(1) Vehicles designed to transport 16 or more passengers, including the driver; and

(2) Vehicles used in the transportation of hazardous materials that require the vehicle to be placarded under 49 C.F.R., Part 172, Subpart F.

(c) Endorsements and restrictions will be noted on the license when appropriate in the following categories:

(1) 'H' - Authorizes the driver to drive a vehicle transporting hazardous materials.

(2) 'K' - Restricts the driver to vehicles not equipped with airbrakes.

(3) 'T' - Authorizes driving double trailers.

(4) 'P' - Authorizes driving vehicles carrying passengers.

(5) 'N' - Authorizes driving tank vehicles.

(6) 'X' - Represents a combination of hazardous materials and tank vehicle endorsements.

(7) 'M' - Authorizes driving a motorcycle.

(8) 'S' - Authorizes driving a school bus.

(d) The fee for issuance of a Class A, B, or C commercial driver license is forty dollars ($40.00). Any person applying for a special endorsement or renewal under subsection (c) of this section shall pay an additional five dollars ($5.00) for each endorsement. The fee required under this section shall be waived for persons who drive a school bus or school activity bus.

(e) The requirements for a commercial driver license do not apply to vehicles used for personal use such as recreational vehicles. A commercial driver license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes;

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions; and

(3) Farm vehicles that meet all of the following criteria:

a. Controlled and operated by the farmer or the farmer's employee and used exclusively for farm use;

b. Used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm;

c. Not used in the operations of a common or contract motor carrier; and

d. Used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation.

"§ 20-37.17. *Record check and notification of license issuance.*

Before issuing a commercial driver license, the Division shall obtain driving record information from the Commercial Driver License Information System (CDLIS), the National Driver Register, and from each state in which the person has been licensed.

Within 10 days after issuing a commercial driver license, the Division shall notify CDLIS of the issuance of the commercial driver license, providing all information necessary to ensure identification of the person.

"§ 20-37.18. *Notification required by driver.*

(a) Any driver holding a commercial driver license issued by this State who is convicted of violating any State law or local ordinance relating to motor vehicle traffic control in any other state, other than parking violations, shall notify the Division in the manner specified by the Division within 30 days of the date of the conviction.

(b) Any driver holding a commercial driver license issued by this State who is convicted of violating any State law or local ordinance relating to motor vehicle traffic control in this or any other state, other than parking violations, shall notify his employer in writing of the conviction within 30 days of the date of conviction.

(c) Any driver whose commercial driver license is suspended, revoked, or cancelled by any state, or who loses the privilege to drive a commercial motor vehicle in any state for any period, including being disqualified from driving a commercial motor vehicle, or who is subject to an out-of-service order, shall notify his employer of that fact before the end of the business day following the day the driver received notice of that fact.

(d) Any person who applies to be a commercial motor vehicle driver shall provide the employer, at the time of the application, with the following information for the 10 years preceding the date of application:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(2) The dates between which the applicant drove for each employer; and

(3) The reason for leaving that employer.

The applicant shall certify that all information furnished is true and complete. Any employer may require an applicant to provide additional information.

"§ 20-37.19. *Employer responsibilities.*

(a) Each employer shall require the applicant to provide the information specified in G.S. 20-37.18(c).

(b) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has had his commercial driver license suspended, revoked, or cancelled by any state, is currently disqualified from driving a commercial vehicle, or is subject to an out-of-service order in any state; or

(2) In which the driver has more than one driver license.

"§ 20-37.20. *Notification of traffic convictions.*

Within 10 days after receiving a report of the conviction of any nonresident holder of a commercial driver license for any violation of State law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial vehicle, the Division shall notify the driver licensing authority in the licensing state of the conviction.

"§ 20-37.21. *Penalties.*

(a) Any person who drives a commercial motor vehicle in violation of G.S. 20-37.12 shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars ($250.00) for a first offense and not less than five hundred dollars ($500.00) for a second or subsequent offense.

(b) Any person who violates G.S. 20-37.18 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(c) Any employer who violates G.S. 20-37.19 shall have committed an infraction and, upon being found responsible, shall pay a penalty of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000)."

§ 20-37.22. *Rule making authority.*

The Division may adopt any rules necessary to carry out the provisions of this Article.

"§ 20-37.23. *Authority to enter agreements.*

The Commissioner shall have the authority to execute or make agreements, arrangements, or declarations to carry out the provisions of this Article."

Sec. 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"*§ 20-17.4. Disqualification and cancellation of a commercial driver license.*

(a) Any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

(1) G.S. 20-138.1 or G.S. 20-138.2(a)(1) - Driving a commercial motor vehicle while subject to an impairing substance;

(2) G.S. 20-138.2(a)(2) - Driving a commercial motor vehicle while the alcohol concentration of the person's blood or breath is 0.04 or more;

(3) G.S. 20-166(a) - Felonious hit and run involving a commercial motor vehicle driven by the person;

(4) Using a commercial motor vehicle in the commission of any felony; or

(5) Refusal to submit to a chemical test to determine the driver's alcohol concentration while driving a commercial motor vehicle.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(b) A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection (a) of this section, or any combination of those offenses, arising from two or more separate incidents. The Division may issue regulations establishing guidelines, including conditions, under which a disqualification for life under this paragraph may be reduced to 10 years.

(c) A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of two serious traffic violations, or 120 days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(e) After suspending, revoking, or cancelling a commercial driver license, the Division shall update its records to reflect that action within 10 days. After suspending, revoking, or cancelling a nonresident commercial driver's privileges, the Division shall forthwith notify the licensing authority of the State which issued the commercial driver license or commercial driver instruction permit."

Sec. 4. G.S. 20-28 is amended by adding a new subsection to read:

"(c) Any person whose commercial driver license has been suspended or revoked or who has been disqualified from operating a commercial motor vehicle as provided in this Chapter who shall drive a commercial motor vehicle upon the highways or public vehicular areas of this State while such license is under suspension, revocation, or disqualification shall be guilty of a misdemeanor. Upon receipt of a record of a violation of this section, the Division shall impose an additional disqualification period equal to the period for which the driver was suspended, revoked, or disqualified when he violated this section."

Sec. 5. G.S. 20-7(a) reads as rewritten:

"(a) Except as otherwise provided in this ~~Article~~ Chapter, no person shall operate a motor vehicle on a highway unless such person is a resident of this State and has first been licensed by the Division under the provisions of this Article or Article 2C for the ~~type or~~ class of vehicle being driven. ~~Drivers'~~ Driver licenses shall be classified under this Article as follows:

(1) Class 'A' which entitles a licensee to drive any vehicle or combination of vehicles~~,~~ with a gross vehicle weight rating (GVWR) of 26,001 pounds or more, provided the GVWR of the vehicle or vehicle being towed are in excess of 10,000 pounds and are exempt from Article 2C of this Chapter. A Class A license entitles the licensee to operate Class B and C vehicles except motorcycles~~, including all vehicles under Classes "B" or "C."~~.

(2) Class 'B' which entitles a licensee to drive a single vehicle ~~weighing over 30,000 pounds gross vehicle weight, any such vehicle towing a vehicle weighing 10,000 pounds gross vehicle weight or less, a single vehicle designed to carry more than 12 passengers and all vehicles under Class "C."~~ with a GVWR of 26,001 pounds or more, or any such vehicle towing a single vehicle not in excess of 10,000 pounds provided the towed vehicle is exempt from Article 2C of this Chapter. A Class ~~"B"~~ B license ~~does not~~ entitles the licensee to operate Class C vehicles except ~~drive a~~ motorcycles.

(3) Class 'C' which entitles a licensee to drive a single vehicle ~~weighing 30,000 pounds gross vehicle weight or less; any such vehicle towing a vehicle weighing 10,000 pounds gross vehicle weight or less; a church bus, farm bus, volunteer transportation vehicle, or activity bus operated for a nonprofit organization when the activity bus is operated for a~~

~~nonprofit purpose; and a fire-fighting vehicle or combination of vehicles (regardless of gross vehicle weight) when operated by any volunteer member of a municipal or rural fire department in the performance of his duty.~~ with a GVWR of less than 26,001 pounds or any such vehicle towing another vehicle with a GVWR not in excess of 10,000 pounds, both of which are exempt from Article 2C. A Class ~~"C"~~ C license does not entitle the licensee to drive a motorcycle. ~~A Class "C" license does not entitle the licensee to drive a vehicle designed to carry more than 12 passengers unless this subsection or G.S. 20-218(a) specifically entitles him to do so.~~

Any unusual vehicle shall be assigned by the Commissioner to the most appropriate class under this subsection or Article 2C with suitable special restrictions if they appear to be necessary.

Any person who takes up residence in this State on a permanent basis is exempt from the provisions of this subsection for 30 days from the date that residence is established, if he is properly licensed in the jurisdiction of which he is a former resident."

Sec. 6. G.S. 20-218(a), as amended by Chapter 558, Session Laws of 1989 reads as rewritten:

"(a) No person shall drive or operate a school bus over the public roads of North Carolina while the same is occupied by children unless said person shall be fully trained in the operation of motor vehicles, and shall furnish to the superintendent of the schools of the county in which said bus shall be operated a certificate from any representative duly designated by the Commissioner of Motor Vehicles, and the chief mechanic in charge of school buses in said county showing that he has been examined by a representative duly designated by the Commissioner of Motor Vehicles, and said chief mechanic in charge of school buses in said county and that he is a fit and competent person to operate or drive a school bus over the public roads of the State. ~~Notwithstanding the provisions of G.S. 20-7(a)(3), the~~ The driver of a school bus or school activity bus must be at least 18 years of age and hold a ~~driver's license of~~ Class 'A', 'B', or 'C' commercial driver license and a school bus driver's certificate~~, and the driver of a school activity bus must be at least age 18 and hold a driver's license of Class "C" and a school bus driver's certificate or a driver's license of Class "A" or Class "B"~~.

Sec. 7. G.S. 20-9(a) reads as rewritten:

"(a) A Class 'C' license shall not be issued to any person under 16 years of age and no Class ~~"A"~~ A, ~~or Class "B"~~ B, or ~~"C"~~ C commercial driver license shall be issued to any person under ~~18~~ 21 years of age except as provided in G.S. 20-37.13(a) and G.S.

20-218(a). An endorsement to transport hazardous materials shall not be issued to any person under 21 years of age."

Sec. 8. G.S. 20-30 is amended by adding a new subdivision to read:

"(8) To possess more than one commercial driver license. Any commercial driver license other than the most recently issued is subject to immediate seizure by any law enforcement officer or judicial official."

Sec. 9. G.S. 20-26(a) reads as rewritten:

"(a) The Division shall keep a record of test, proceedings and orders pertaining to all driver's licenses granted, refused, suspended or revoked. The Division shall keep records of convictions as defined in G.S. 20-24(c) occurring outside North Carolina only for the offenses of exceeding a stated speed limit of 55 miles per hour or more by more than 15 miles per hour, driving while license suspended or revoked, careless and reckless driving, engaging in prearranged speed competition, engaging willfully in speed competition, hit-and-run driving resulting in damage to property, unlawfully passing a stopped school bus, illegal transportation of alcoholic beverages, and the offenses included in G.S. 20-17. Provided, the Division shall also record convictions for speeding in excess of 15 miles per hour over the posted speed limit occurring outside of North Carolina if the vehicle involved is a commercial motor vehicle."

Sec. 10. G.S. 20-24(c) reads as rewritten:

"(c) For ~~the purpose~~ purposes of this ~~Article~~ Chapter, the term 'conviction' when referring to offenses committed in North Carolina shall mean: (i) a final conviction of a criminal offense including a no contest plea, ~~or~~ (ii) a determination that a person is responsible for an infraction, including a no contest plea, (iii) ~~Also for the purpose of this Article~~ an order of forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes, which forfeiture has not been vacated~~, shall be equivalent to a conviction,~~ , or (iv) ~~In addition to the foregoing provisions and for the purpose of this Article,~~ a third or subsequent prayer for judgment continued within any five-year period ~~shall be considered as a final conviction~~ and to this end all orders entering prayers for judgment continued entered by the courts shall be reported to the Division of Motor Vehicles.

For the purposes of this Chapter, the term 'conviction' when referring to offenses committed outside of the State of North Carolina shall mean an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal; an

unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court; or a violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

Sec. 11. G.S. 20-17(4) reads as rewritten:

"(4) Failure to stop and render aid ~~as required under the laws of this State in the event of a motor vehicle accident~~ in violation of G.S. 20-166(a) or (b)."

Sec. 12. Chapter 20 of the General Statutes is amended by adding a new section to read:

"*§ 20-138.2. Impaired driving in commercial vehicle.*

(a) Offense. -- A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While appreciably under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more.

(b) Defense Precluded. -- The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(c) Pleading. -- To charge a violation of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges the defendant drove a commercial motor vehicle on a highway, street, or public vehicular area while subject to an impairing substance.

(d) Implied Consent Offense. -- An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(e) Punishment: Effect When Impaired Driving Offense Also Charged. -- The offense in this section is a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00), up to two years imprisonment, or both. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1.

(f) Limited Driving Privilege. -- A person convicted of the offense of impaired driving under this section is not eligible for a limited driving privilege to operate a commercial motor vehicle. If a person is convicted under this section and under G.S. 20-138.1, he may be

considered for a limited driving privilege for a noncommercial motor vehicle if he meets the requirements of G.S. 20-179.3(b). Such a privilege shall be for the purposes specified in G.S. 20-179.3(a) and issued according to the procedure in G.S. 20-179.3(d) and subsections (f) through (k).

If a person is convicted under this section and he had a blood alcohol concentration below 0.10, he is nonetheless eligible to apply for a Class C noncommercial license.

(g) The provisions of G.S. 20-139.1 shall apply to the offense of impaired driving in a commercial motor vehicle."

Sec. 13. G.S. 20-16.2(a)(4) reads as rewritten:

"(a) (4) ~~If any test reveals an alcohol concentration of 0.10 or more, his~~ His driving privilege will be revoked immediately for at least 10 days~~.~~ if:

a. The test reveals an alcohol concentration of 0.10 or more; or

b. He was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more."

Sec. 14. G.S. 20-16.2(i)(2) reads as rewritten:

"(2) That his license will be revoked for at least 10 days if:

a. ~~the~~ The test reveals an alcohol concentration of 0.10 or more; ~~and~~ or

b. He was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more."

Sec. 15. G.S. 20-16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol Concentrations of 0.10 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis; ~~or~~

b. Has an alcohol concentration of 0.10 or more within a relevant time after the driving; or

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial vehicle."

Sec. 16. G.S. 20-16.5(b1)(2) reads as rewritten:

"(2) He has~~,~~ :

a. ~~at any relevant time after the driving, a~~ An alcohol concentration of 0.10 or more at any relevant time after driving; ~~and~~ or

b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; and".

Sec. 17. G.S. 20-26 is amended by adding a new subsection to read:

"(b1) The registered or declared weight set forth on the vehicle registration card or a certified copy of the Division record sent by the Division of Criminal Information or otherwise is admissible in any judicial or administrative proceeding and shall be **prima facie** evidence of the registered or declared weight."

Sec. 18. Chapter 1112 of the 1987 Session Laws is repealed.

Sec. 19. Sections 1 through 17 of this act shall become effective September 1, 1990. Section 18 of this act shall become effective June 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 699 **CHAPTER 772**

AN ACT TO IMPOSE AN EXCISE TAX ON CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2D.

"Schedule B-D. Controlled Substance Tax.

"§ 105-113.90. Purpose.

The purpose of this Article is to levy an excise tax on persons who possess controlled substances and counterfeit controlled substances in violation of North Carolina law and to provide that a person who possesses such substances in violation of this Article is guilty of a felony. Nothing in this Article may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance.

"§ 105-113.91. Definitions.

The following definitions apply in this Article:

(1) Controlled Substance. Defined in G.S. 90-87.

(2) Counterfeit Controlled Substance. Defined in G.S. 90-87.

(3) Dealer. A person who in violation of G.S. 90-95 possesses, delivers, sells, or manufactures more than 42.5 grams of marijuana, or seven or more grams of any other controlled substance or counterfeit controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance or counterfeit controlled substance that is not sold by weight.

(4) Deliver. Defined in G.S. 90-87.

(5) Manufacture. Defined in G.S. 90-87.

(6) Marijuana. Defined in G.S. 90-87.

(7) Person. An individual or an entity that identifies itself as an entity and exists for a purpose, including a corporation, firm, partnership, institution, or other unit.

(8) Secretary. The Secretary of the Department of Revenue.

"§ *105-113.92. Excise tax on controlled substances.*

An excise tax is levied on controlled substances and counterfeit controlled substances possessed by dealers at the following rates:

(1) At the rate of three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of marijuana or counterfeit marijuana.

(2) At the rate of two hundred dollars ($200.00) for each gram, or fraction thereof, of any other controlled substance or counterfeit controlled substance that is sold by weight.

(3) At the rate of four hundred dollars ($400.00) for each 10 dosage units, or fraction thereof, of any other controlled substance or counterfeit controlled substance that is not sold by weight.

A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

"§ *105-113.93. Reports; revenue stamps.*

The Secretary shall issue stamps to affix to controlled substances and counterfeit controlled substances to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the form prescribed by the Secretary. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the

amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

"§ *105-113.94. When tax payable.*

The tax imposed by this Article is payable by any dealer who possesses a controlled substance or counterfeit controlled substance in this State upon which the tax has not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the dealer acquires a non-tax-paid controlled substance or counterfeit controlled substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which case the tax is payable on the next working day. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the controlled substance. Once the tax due on a controlled substance or counterfeit controlled substance has been paid, no additional tax is due under this Article even though the controlled substance or counterfeit controlled substance may be handled by other dealers.

"§ *105-113.95. Violations of Article a felony.*

A dealer who violates this Article is guilty of a Class I felony, and is subject to an additional penalty of one hundred percent (100%) of any tax due from the dealer. Notwithstanding any other provision of law, no prosecution for a violation of this Article shall be barred before the expiration of six years after the date of the violation.

"§ *105-113.96. Assessments.*

Notwithstanding any other provision of law, an assessment against a dealer who possesses a controlled substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for jeopardy assessments or the procedure set forth in G.S. 105-242, including causing execution to be issued immediately against the personal property of the dealer unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter.

"§ *105-113.97. Confidentiality of information.*

Notwithstanding any other provision of law, information obtained pursuant to this Article is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of this Article. Stamps issued pursuant to this Article may not be used in a criminal prosecution other than a prosecution for a violation of this Article. A person who discloses information obtained pursuant to this Article is guilty of a misdemeanor. This section does not prohibit the Secretary from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports."

Sec. 2. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"*§ 114-18.1. Information on controlled substances.*

(a) Every local law enforcement agency and every State law enforcement agency shall, within 48 hours after making an arrest of an individual in possession of a controlled substance or a counterfeit controlled substance, report the arrest to the State Bureau of Investigation. Every local law enforcement agency and every State law enforcement agency shall, within 48 hours after seizing a controlled substance or a counterfeit controlled substance, report the seizure to the State Bureau of Investigation. The report shall include the time and place of the arrest or seizure, the amount and location of the substance, and the identification of any individual in possession of the substance.

(b) The following definitions apply in this section:

(1) Controlled Substance. Defined in G.S. 90-87.

(2) Counterfeit Controlled Substance. Defined in G.S. 90-87.

(3) Local Law Enforcement Agency. A municipal police department, a county police department, or a sheriff's department.

(4) State Law Enforcement Agency. Any State agency, force, department, or unit responsible for enforcing criminal laws."

Sec. 3. G.S. 114-19 reads as rewritten:

"*§ 114-19. Criminal statistics.*

(a) It shall be the duty of the State Bureau of Investigation to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source

of any criminal conspiracy, crime wave, movement or cooperative action on the part of the criminals, reporting such conditions, and to cooperate with all officials in detecting and preventing.

(b) The State Bureau of Investigation shall, on a daily basis, notify the Department of Revenue of all reports it receives pursuant to G.S. 114-18.1 of arrests and seizures involving controlled substances and counterfeit substances. The Bureau shall also, as soon as practicable, provide the Department with any additional information it receives regarding such arrests and seizures."

Sec. 4. G.S. 90-112(c) reads as rewritten:

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in custody of the law-enforcement agency seizing it, which may:

(1) Place the property under seal; or,

(2) Remove the property to a place designated by it; or,

(3) Request that the North Carolina Department of Justice take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Any property seized by a State, local, or county law enforcement officer shall be held in safekeeping as provided in this subsection until an order of disposition is properly entered by the judge."

Sec. 5. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each department and agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that department or agency.

Sec. 6. Because at this time it is impossible to estimate the amount of additional revenue that may be generated by this act, sound budgetary practices dictate that the taxes collected pursuant to this act should not be expended before the 1990-91 fiscal year. Therefore, notwithstanding any other provision of law, the Secretary of Revenue shall deposit the taxes collected pursuant to this act in a special fund to the credit of the State Treasurer, to be called the State Controlled Substances Tax Fund. It is the intent of the General Assembly that these tax proceeds shall remain in the Special Fund until the General Assembly provides that they shall be deposited in the General Fund.

Sec. 7. This act shall become effective January 1, 1990.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 832 CHAPTER 773

AN ACT TO ADOPT THE PLOTT HOUND AS THE OFFICIAL STATE DOG, TO PROVIDE THAT LARCENY OF A DOG IS A

CLASS J FELONY, AND TO PROVIDE THAT THE TAKING OF A DOG FOR TEMPORARY PURPOSES IS A MISDEMEANOR.

Whereas, it is generally known that the dog is mankind's best friend; and

Whereas, the Plott Hound breed originated in the mountains of North Carolina in 1750 and is the only breed known to have originated in this State; and

Whereas, the Plott Hound is a legendary hunting dog known as a most courageous fighter and tenacious tracker as well as a gentle and extremely loyal companion to the hunters of North Carolina; and

Whereas, the Plott Hound is regarded as having the most beautifully colored coat of any hound and a spine-tingling, bugle-like call; and

Whereas, the State of North Carolina is fortunate to have the Plott Hound, which is one of only four breeds known to be of American origin; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 145 of the General Statutes is amended by adding a new section to read:

"*§ 145-13. The State dog.*

The Plott Hound is adopted as the official dog of the State of North Carolina."

Sec. 2. G.S. 14-81 reads as rewritten:

"*§ 14-81. Larceny of horses, mules, swine, ~~and cattle.~~ cattle, or dogs.*

(a) Larceny of horses, mules, swine, or cattle is a Class H felony.

(a1) Larceny of a dog is a Class J felony.

(b) In sentencing a person convicted of violating this section, the judge shall, as a minimum punishment, place a person on probation subject to the following conditions:

(1) A person must make restitution for the damage or loss caused by the larceny of the ~~livestock.~~ livestock or dogs, and

(2) A person must pay a fine of not less than the amount of the damages or loss caused by the larceny of the ~~livestock.~~ livestock or dogs.

(c) No provision in this section shall limit the authority of the judge to sentence the person convicted of violating this section to an active sentence."

Sec. 3. G.S. 14-82 reads as rewritten:

"*§ 14-82. Taking ~~horses or mules~~ horses, mules, or dogs for temporary purposes.*

If any person shall unlawfully take and carry away any horse, gelding, ~~mare or mule,~~ mare, mule, or dog, the property of another person, secretly and against the will of the owner of such property, with intent to deprive the owner of the special or temporary use of the same, or with the intent to use such property for a special or temporary purpose, the person so offending shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than six months, or both."

Sec. 4. Sections 2 and 3 of this act shall become effective October 1, 1989, and shall apply to offenses occurring on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 913 **CHAPTER 774**

AN ACT TO INCREASE THE FEE FOR VANITY MOTOR VEHICLE REGISTRATION PLATES AND TO PROVIDE FOR THE DISBURSEMENT OF THE ADDITIONAL REVENUES DERIVED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-81.3(b) and (c) read as rewritten:

"(b) An owner who desires personalized registration plates shall make application for such plates on forms which shall be provided by the Division of Motor Vehicles and pay the sum of ~~ten dollars ($10.00)~~ twenty dollars ($20.00) annually, which shall be in addition to the regular motor vehicle registration fee. Once an owner has obtained personalized plates, he, where possible, will have first priority on those plates for the following years provided he makes timely and appropriate application; provided, however, that the Commissioner shall not issue a personalized license plate pursuant to this section except upon written application therefor on a form furnished by the Commissioner in which the applicant certifies that his operator's or chauffeur's license has not been revoked or suspended under Article 2 of Chapter 20 of the General Statutes within two years prior to the date of the application; and provided, further, that any personalized license plate issued pursuant to this section shall be cancelled and recalled by the Commissioner and the application fee forfeited in the event that the Commissioner determines that a false application has been submitted.

(c) ~~The~~ One-half of the revenue derived from the additional fee shall be deposited in the Recreation and Natural Heritage Trust Fund established under G.S. 113-77.7. The remaining one-half of the

revenue derived from the additional fee for the special personalized registration plates shall be placed in a separate fund designated the 'Personalized Registration Plate Fund'. After deducting the cost of the plates, plus budgetary requirements for ~~handling~~ advertising, handling, and issuance to be determined by the Commissioner, ~~any remaining moneys derived from the additional fee for such plates~~ the revenue in the Personalized Registration Plate Fund shall be transferred ~~quarterly:~~ quarterly as follows:

(1) Thirty-three percent (33%) to the account of the Department of Commerce to aid in financing out-of-state print and other media advertising under the program for the promotion of travel and industrial development in this State.

(2) Fifty percent (50%) to the Department of Transportation to be used solely for the purpose of beautification of highways other than those designated as interstate. These funds shall be administered by the Department of Transportation for beautification purposes not inconsistent with good landscaping and engineering principles.

(3) Seventeen percent (17%) to the account of the Department of Human Resources to promote travel accessibility for disabled persons in this State. These funds shall be used: to collect and update site information on travel attractions designated by the Department of Commerce in their publications; to provide technical assistance to travel attraction concerning accommodation of disabled tourists; and to develop, print, and promote the publication ACCESS NORTH CAROLINA. The Department of Human Resources shall make copies of ACCESS NORTH CAROLINA available to the Department of Commerce for their use in Welcome Centers and other appropriate Department of Commerce offices.

(4) The Department of Commerce shall promote ACCESS NORTH CAROLINA in their publications (including providing a toll-free telephone line and in address for requesting copies of the publication) and provide technical assistance to the Department of Human Resources on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Commerce shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Human Resources.

(5) Funds allocated by this section for promotion of travel accessibility and ACCESS NORTH CAROLINA which are not spent and are not obligated at the end of the fiscal year shall not revert but shall be transferred to the Department of Administration for removal of man-made barriers to disabled

travelers at State-funded travel attractions. Guidelines for the removal of man-made barriers shall be developed in consultation with the Department of Human Resources."

Sec. 2. G.S. 20-80.1(a) reads as rewritten:

"(a) The Commissioner shall cause to be made a sufficient number of distinctive motor vehicle license plates, in the form hereafter provided, for issuance to eligible members of the reserve components of the armed forces of the United States, upon proper application and under such regulations as he deems appropriate. Upon satisfactory proof of eligibility, the commissioner shall collect ~~fees in accordance with G.S. 20-81.3(b) and shall disburse fees in accordance with G.S. 20-81.3(c)~~ a fee in an amount equal to the applicable fee under G.S. 20-87 plus ten dollars ($10.00). Fees collected under this section shall be deposited in the Personalized Registration Plate Fund."

Sec. 3. G.S. 20-81.5 reads as rewritten:

"*§ 20-81.5. Civil Air Patrol plates.*

(a) The Commissioner shall cause to be made each year sufficient number of license plates to furnish each member of the North Carolina Wing of the Civil Air Patrol with not more than two thereof, said license plates to be in the same form and character as other license plates now or hereinafter authorized by law to be used upon private vehicles registered in this State, except that such license plates shall bear on the face thereof the following: the words 'North Carolina,' the year designation, and the words 'Civil Air Patrol.' The ~~said~~ license plates shall be issued only to members of the North Carolina Wing of the Civil Air Patrol and for each license plate the Commissioner shall collect a fee ~~as required by G.S. 20-81.3(b) for special personalized registration plates, in addition to the fees in an amount equal to the fees collected for the licensing and registering of private vehicles.~~ in an amount equal to the applicable fee under G.S. 20-87 plus ten dollars ($10.00). The Commander of the North Carolina Wing of the Civil Air Patrol shall furnish the Commissioner annually with a list of the number of such distinctive plates required accompanied by the fee referred to hereinabove and such list shall contain the rank of each officer listed in order of his seniority in the North Carolina Civil Air Patrol. The said license plates to be set aside for officer personnel shall be numbered beginning with the number 201 and running in numerical sequence thereafter up to and including the number 500, according to seniority; the senior officer being issued the plate bearing the number 201. Enlisted personnel, senior members and cadet members applying for such distinctive plates shall, upon application and payment of the required fee, receive such plates in numerical sequence beginning with the number 501. Applications for such distinctive license plates shall be on forms as may be agreed

upon by the Wing Commander of the North Carolina Civil Air Patrol and the Division of Motor Vehicles. If a holder of such a distinctive license plate shall be discharged from the North Carolina Civil Air Patrol under other than honorable conditions, he shall within 30 days exchange such distinctive plate for a standard plate.

(b) ~~The revenue derived from the additional fee for such plates shall be placed in a separate fund designated the "Civil Air Patrol Registration Plate Fund." After deducting the cost of the plates, plus budgetary requirements for handling and issuance to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plates shall be periodically transferred to the Department of Transportation as provided in G.S. 20-81.3(c)(2).~~ Fees collected under this section shall be deposited in the Personalized Registration Plate Fund."

Sec. 4. G.S. 20-81.10(a) reads as rewritten:

"(a) The Commissioner shall cause to be made a sufficient number of distinctive motor vehicle license plates for issuance to eligible persons who make application on a form designed by the Division and supply documentation that they were members of the U.S. Military Service and were present at the attack on Pearl Harbor on December 7, 1941. Upon satisfactory proof of eligibility, the Commissioner shall collect ~~fees in accordance with G.S. 20-81.3(b) and shall disburse fees in accordance with G.S. 20-81.3(c).~~ a fee in an amount equal to the applicable fee under G.S. 20-87 plus ten dollars ($10.00). Fees collected under this section shall be deposited in the Personalized Registration Plate Fund."

Sec. 5. G.S. 20-81.11(a) reads as rewritten:

"(a) The Commissioner shall cause to be made a sufficient number of distinctive motor vehicle license plates for issuance to eligible persons who make application on a form designed by the Division and supply documentation that they were members of the U.S. Military Service and were recipients of the Purple Heart Award. Upon satisfactory proof of eligibility, the Commissioner shall collect ~~fees in accordance with G.S. 20-81.3(b) and shall disburse fees in accordance with G.S. 20-81.3(c).~~ a fee in an amount equal to the applicable fee under G.S. 20-87 plus ten dollars ($10.00). Fees collected under this section shall be deposited in the Personalized Registration Plate Fund."

Sec. 6. The Legislative Research Commission is authorized to study the fee structure for personalized license plates and special plates, either as part of a study of the revenue laws or a related topic or as a separate study. The Commission shall consider whether the fees for these two types of plates should be the same. The Commission may report its findings to the 1991 General Assembly.

Sec. 7. This act shall become effective October 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 467 **CHAPTER 775**

AN ACT TO REMOVE BARRIERS TO COVERAGE IN EMPLOYER-SPONSORED GROUP HEALTH PLANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-254.4(b) reads as rewritten:

"(b) No policy or contract of group accident, group health or group accident and health insurance shall be delivered or issued for delivery in this State unless the group of persons thereby insured conforms to the requirements of the following ~~paragraph~~ subdivisions:

(1) Under a policy issued to an employer, principal, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, or by a principal or two or more principals in the same industry or kind of business, which employer, principal, or trustee shall be deemed the policyholder, covering, except as hereinafter provided, only employees, or agents, of any class or classes thereof determined by conditions pertaining to employment, or agency, for amounts of insurance based upon some plan which will preclude individual selection. The premium may be paid by the employer, by the employer and the employees jointly, or by the employee; and where the relationship of principal and agent exists, the premium may be paid by the principal, by the principal and agents, jointly, or by the agents. If the premium is paid by the employer and the employees jointly, or by the principal and agents jointly, or by the employees, or by the agents, the group shall be structured on an actuarially sound basis.

(2) For employer groups of 50 or more persons no evidence of individual insurability may be required at the time the person first becomes eligible for insurance or within 31 days thereafter except for any insurance supplemental to the basic coverage for which evidence of individual insurability may be required. With respect to trusteed groups the phrase 'groups of 50' must be applied on a participating unit basis for the purpose of requiring individual evidence of insurability.

(3) Policies may contain a provision limiting coverage for preexisting conditions. Preexisting conditions must be

covered no later than 12 months after the effective date of coverage. Preexisting conditions are defined as 'those conditions for which medical advice or treatment was received or recommended or which could be medically documented within the 12-month period immediately preceding the effective date of the person's coverage.' Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any prior group plan. Credit must be given for that portion of the waiting period which was met under the prior plan."

Sec. 2. G.S. 58-254.4(c) reads as rewritten:

"(c) The term 'employees' as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. Employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term 'employee' is defined as a nonseasonal person working 30 hours per week, and who is otherwise eligible for coverage. The term 'employer' as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment."

Sec. 3. Article 26 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-254.4A. Renewal, discontinuance, or replacement of group health insurance.*

(a) This section applies to group accident, group health, or group accident and health policies or certificates that are delivered, issued for delivery, renewed, or used in this State which provide hospital, surgical, or major medical expense insurance, or any combination of these coverages, on an expense incurred or service basis. It specifically includes a certificate issued under a policy that was issued to a trust located out of this State, but which includes participating employers located in this State. Renewal of these policies or

certificates is presumed to occur on the anniversary date that the coverage was first effective on the employees of the employer.

(b) Whenever a contract described in subsection (a) of this section is replaced by another group contract within 15 days of termination of coverage of the previous group contract, the liability of the succeeding insurer for insuring persons covered under the previous group contract is:

(1) Each person who is eligible for coverage in accordance with the succeeding insurer's plan of benefits with respect to classes eligible and activity at work and nonconfinement rules must be covered by the succeeding insurer's plan of benefits; and

(2) Each person not covered under the succeeding insurer's plan of benefits in accordance with subdivision (b)(1) of this section must nevertheless be covered by the succeeding insurer if that person was validly covered, including benefit extension, under the prior plan on the date of discontinuance and if the person is a member of the class of persons eligible for coverage under the succeeding insurer's plan."

Sec. 4. G.S. 57-7(e) reads as rewritten:

"(e) A hospital service corporation may issue a master group contract with the approval of the Commissioner of Insurance provided such contract and the individual certificates issued to members of the group, shall comply in substance to the other provisions of this Chapter. Any such contract may provide for the adjustment of the rate of the premium or benefits conferred as provided in said contract, and in accordance with an adjustment schedule filed with and approved by the Commissioner of Insurance. If such master group contract is issued, altered or modified, the subscribers' contracts issued in pursuance thereof are altered or modified accordingly, all laws and clauses in subscribers' contracts to the contrary notwithstanding. Nothing in this Chapter shall be construed to prohibit or prevent the same. Forms of such contract shall at all times be furnished upon request of subscribers thereto.

(1) For employer groups of 50 or more persons no evidence of individual insurability may be required at the time the person first becomes eligible for coverage or within 31 days thereafter except for any insurance supplemental to the basic coverage for which evidence of individual insurability may be required. With respect to trusteed groups the phrase 'groups of 50' must be applied on a participating unit basis for the purpose of requiring individual evidence of insurability.

(2) Employer master group contracts may contain a provision limiting coverage for preexisting conditions. Preexisting conditions must be covered no later than 12 months after the effective date of coverage. Preexisting conditions are defined as 'those conditions for which medical advice or treatment was received or recommended or which could be medically documented within the 12-month period immediately preceding the effective date of the person's coverage.' Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any prior group plan. Credit must be given for that portion of the waiting period which was met under the prior plan.

(3) Employees shall be added to the master group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term 'employee' is defined as a nonseasonal person working 30 hours per week, and who is otherwise eligible for coverage.

(4) Whenever an employer master group contract replaces another group contract, whether this contract was issued by a Chapter 57, 57B, or 58 corporation, the liability of the succeeding corporation for insuring persons covered under the previous group contract is (i) each person is eligible for coverage in accordance with the succeeding corporation's plan of benefits with respect to classes eligible and activity at work and nonconfinement rules must be covered by the succeeding corporation's plan of benefits; and (ii) each person not covered under the succeeding corporation's plan of benefits in accordance with (i) above must nevertheless be covered by the succeeding corporation if that person was validly covered, including benefit extension, under the prior plan on the date of discontinuance and if the person is a member of the class of persons eligible for coverage under the succeeding corporation's plan."

Sec. 5. Chapter 57B is amended by adding a new section to read:

"*§ 57B-8.1. Master group contracts, filing requirement; required and prohibited provisions.*

(a) A health maintenance organization may issue a master group contract with the approval of the Commissioner of Insurance provided the contract and the individual certificates issued to members of the

group, shall comply in substance to the other provisions of this Chapter. Any such contract may provide for the adjustment of the rate of the premium or benefits conferred as provided in the contract, and in accordance with an adjustment schedule filed with and approved by the Commissioner of Insurance. If the master group contract is issued, altered or modified, the enrollees' contracts issued in pursuance thereof are altered or modified accordingly, all laws and clauses in the enrollees' contracts to the contrary notwithstanding. Nothing in this Chapter shall be construed to prohibit or prevent the same. Forms of such contract shall at all times be furnished upon request of enrollees thereto.

(b) For employer groups of 50 or more persons no evidence of individual insurability may be required at the time the person first becomes eligible for insurance or within 31 days thereafter except for any insurance supplemental to the basic coverage for which evidence of individual insurability may be required. With respect to trusteed groups the phrase 'groups of 50' must be applied on a participating unit basis for the purpose of requiring individual evidence of insurability.

(c) Employer master group contracts may contain a provision limiting coverage for preexisting conditions. Preexisting conditions must be covered no later than 12 months after the effective date of coverage. Preexisting conditions are defined as 'those conditions for which medical advice or treatment was received or recommended or which could be medically documented within the 12-month period immediately preceding the effective date of the person's coverage.' Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any prior group plan. Credit must be given for that portion of the waiting period which was met under the prior plan.

(d) Employees shall be added to the master group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term 'employee' is defined as a nonseasonal person working 30 hours per week, and who is otherwise eligible for coverage.

(e) Whenever an employer master group contract replaces another group contract, whether the contract was issued by a Chapter 57, 57B, or 58 corporation, the liability of the succeeding corporation for insuring persons covered under the previous group contract is:

(1) Each person who is eligible for coverage in accordance with the succeeding corporation's plan of benefits with respect to

classes eligible and activity at work and nonconfinement rules must be covered by the succeeding corporation's plan of benefits; and

(2) Each person not covered under the succeeding corporation's plan of benefits in accordance with (e)(1) must nevertheless be covered by the succeeding corporation if that person was validly covered, including benefit extension, under the prior plan on the date of discontinuance and if the person is a member of the class of persons eligible for coverage under the succeeding corporation's plan."

Sec. 6. This act shall become effective January 1, 1990.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 681 **CHAPTER 776**

AN ACT TO IMPROVE THE SOLVENCY PROTECTION OF HEALTH MAINTENANCE ORGANIZATIONS; TO PROVIDE FOR MORE PROTECTION OF HMO ENROLLEES; TO PROVIDE FOR A FRANCHISE OR PRIVILEGE TAX ON HMOs; AND TO CREATE AND MAINTAIN A FUND TO PAY FOR THE COSTS OF SUPERVISING, REHABILITATING, CONSERVING, OR LIQUIDATING IMPAIRED HMOs.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds and declares that:

(1) Health maintenance organizations (HMOs) provide one of the more promising means of providing health care benefits to the citizens of North Carolina.

(2) Previous North Carolina General Statutes set minimal solvency requirements to encourage the growth of HMOs.

(3) The expenses of HMOs and health care costs have grown to the point that minimal solvency requirements are no longer prudent public policy.

(4) One-fourth of the HMOs licensed in North Carolina have become insolvent, thereby adversely affecting over 60,000 North Carolinians; and more mergers and further thinning of the HMO market are anticipated.

(5) For over 12 years HMOs have been regulated without contributing to the cost of such regulation.

(6) The regulatory oversight of HMOs has become increasingly more involved and time consuming for the Department of Insurance.

(7) All other forms of State-regulated health care benefits coverage pay a tax into the General Fund, a portion of which is used to support the cost of regulation.

(8) For every person who transfers from a regulated, taxed insurance plan to an HMO, the State suffers a tax revenue loss.

(9) The General Assembly believes that similar and interchangeable regulated insurance products should be taxed as equally and equitably as possible to offset the cost of regulation.

Sec. 2. G.S. 57B-2 is amended by adding new subsections to read:

"(k) 'Subscriber' means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the HMO; or in the case of an individual contract, the person in whose name the contract is issued.

(l) 'Participating provider' means a provider who, under an express or implied contract with the HMO or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, directly or indirectly, from the HMO, other than copayment or deductible.

(m) 'Insolvent' or 'insolvency' means that the HMO has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

(n) 'Carrier' means an HMO, an insurer, a nonprofit hospital or medical service corporation, or other entity responsible for the payment of benefits or provision of services under a group contract.

(o) 'Discontinuance' means the termination of the contract between the group contract holder and an HMO due to the insolvency of the HMO and does not mean the termination of any agreement between any individual enrollee and the HMO.

(p) 'Uncovered expenditures' means the amounts owed or paid to any provider who provides health care services to an enrollee and where such amount owed or paid is (i) not made pursuant to a written contract that contains the 'hold harmless' provisions defined in G.S. 57B-15.3; or (ii) not guaranteed or insured by a guaranteeing organization or insurer under the terms of a written guarantee or insurance policy that has been determined to be acceptable to the Commissioner. 'Uncovered expenditures' includes amounts owed or paid to providers directly from the HMO as well as payments made by a medical group, independent practice association, or any other similar organization to reimburse providers for services rendered to an enrollee."

Sec. 3. G.S. 57B-2(f) reads as rewritten:

"(f) 'Health maintenance organization' or 'HMO' means any person that undertakes to provide or arrange for ~~one or more health care plans~~ the delivery of basic health care services to enrollees on a prepaid basis except for enrollee responsibility for copayments and deductibles. For the purposes of 11 U.S.C. §109(b)(2) and (d), an HMO is a domestic insurance company."

Sec. 4. G.S. 57B-3(a) reads as rewritten:

"(a) Notwithstanding any law of this State to the contrary, any person may apply to the Commissioner for ~~and obtain~~ a certificate of authority to establish and operate a health maintenance organization in compliance with this Chapter. No person shall establish or operate a health maintenance organization in this State, nor sell or offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this Chapter. A foreign corporation may qualify under this Chapter, subject to its full compliance with Article 17 of General Statute Chapter 58."

Sec. 5. G.S. 57B-3(c)(4) reads as rewritten:

"(4) A copy of any contract form made or to be made between any class of providers and the HMO and a copy of any contract form made or to be made between third party administrators, marketing consultants, or persons listed in ~~paragraph (3)~~ subdivision (3) of this subsection and the ~~applicant~~ HMO;".

Sec. 6. G.S. 57B-3(c)(9) reads as rewritten:

"(9) A financial feasibility plan, which includes detailed enrollment projections, the methodology for determining premium rates to be charged during the first 12 months of operations certified by an actuary or a recognized actuarial consultant, a projection of balance sheets, cash flow statements, showing any capital expenditures, purchase and sale of investments and deposits with the State, and income and expense statements anticipated from the start of operations until the organization has had net income for at least one year; ~~A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of the initial operating results anticipated,~~ and a statement as to the sources of working capital as well as any other sources of ~~funding.~~ funding; ~~The three-year projection shall be prepared by the applicant's staff actuary or by a recognized actuarial consultant;~~".

Sec. 7. G.S. 57B-3(c) is amended by redesignating subdivision (12) as (14) and by adding the following subdivisions:

"(12) A description of the procedures to be implemented to meet the protection against insolvency requirements of G.S. 57B-15.2;

(13) A description of the internal grievance procedures to be utilized for the investigation and resolution of enrollee complaints and grievances; and".

Sec. 8. G.S. 57B-3(d)(1) reads as rewritten:

"(1) A health maintenance organization shall file a notice describing any significant modification of the operation set out in the information required by subsection (c) of this section. Such notice shall be filed with the Commissioner prior to the modification. If the Commissioner does not disapprove within 90 days after the filing, such modification shall be deemed to be approved. ~~A request for expansion of service area is a modification subject to the terms of this section.~~ Changes subject to the terms of this section include expansion of service area, changes in provider contract forms and group contract forms where the distribution of risk is significantly changed, and any other changes that the Commissioner describes in properly promulgated rules. Every HMO shall report to the Commissioner for his information material changes in the provider network, the addition or deletion of Medicare risk or Medicaid risk arrangements and the addition or deletion of employer groups that exceed ten percent (10%) of the health maintenance organization's book of business or such other information as the Commissioner may require. Such information shall be filed with the Commissioner within 15 days after implementation of the reported changes. Every HMO shall file with the Commissioner all subsequent changes in the information or forms that are required by this Chapter to be filed with the Commissioner."

Sec. 9. G.S. 57B-6 reads as rewritten:

"§ *57B-6. Reserves.*

Every health maintenance organization after the first full year of doing business ~~after the passage of this section~~ shall accumulate ~~and~~, maintain, and segregate in a separate account, in addition to proper reserves for current administrative liabilities and whatever reserves are deemed adequate and proper by the Commissioner ~~of Insurance~~ for unpaid bills, and unearned membership dues, a special contingent surplus or reserve at the following rates annually of its gross annual collections from membership dues, until said reserve shall equal three times its average monthly expenditures:

(1) First $200,000 4%

(2) Next $200,000 2%
(3) All above $400,000 1%

Any such health maintenance organization may accumulate and maintain a contingent reserve in excess of the reserve hereinabove provided for, not to exceed an amount equal to six times the average monthly expenditures.

In the event the Commissioner ~~of Insurance~~ finds that special conditions exist warranting ~~a decrease~~ an adjustment in the reserves or schedule of reserves, hereinabove provided for, it may be modified by the Commissioner ~~of Insurance~~ accordingly. The Commissioner shall adopt rules that he considers necessary to provide for standards for the adjustment of contingent reserves."

Sec. 10. G.S. 57B-11 is repealed.

Sec. 11. G.S. 57B-15.2(b) reads as rewritten:

"(b) Each full service medical health maintenance organization shall maintain a minimum net worth of not less than ~~seven hundred fifty thousand dollars ($750,000)~~ one million dollars ($1,000,000), which shall be increased by the amount of the contingency reserves calculated annually in accordance with the provisions of G.S. 57B-6. The net worth calculation shall be computed in accordance with statutory accounting principles generally recognized in the regulation of health maintenance organizations and the Commissioner may promulgate such regulations as he deems appropriate to carry out the provisions of this section. If a health maintenance organization fails to comply with the net worth requirement of this subsection or subsections (c) or (d) of this section, the Commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrollees."

Sec. 12. G.S. 57B-15.2(c) reads as rewritten:

"(c) The minimum net worth for a health maintenance organization authorized to operate on July 17, 1987, and having a net worth of less than ~~seven hundred fifty thousand dollars ($750,000)~~ one million dollars ($1,000,000) shall be as follows:

(1) $150,000 by December 31, 1987
(2) $300,000 by December 31, 1988
(3) $450,000 by December 31, 1989
(4) ~~$600,000~~ $750,000 by December 31, 1990
(5) ~~$750,000~~ $1,000,000 by December 31, 1991

The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 57B-6."

Sec. 13. Chapter 57B of the General Statutes is amended by adding the following new sections to read:

"*§ 57B-15.3. Hold harmless agreements or special deposit.*

(a) Unless the HMO maintains a special deposit in accordance with subsection (b) of this section, each contract between every HMO and a participating provider of health care services shall be in writing and shall set forth that in the event the HMO fails to pay for health care services as set forth in the contract, the subscriber or enrollee shall not be liable to the provider for any sums owed by the HMO. No other provisions of such contracts shall, under any circumstances, change the effect of such a provision. No participating provider, or agent, trustee, or assignee thereof, may maintain any action at law against a subscriber or enrollee to collect sums owed by the HMO.

(b) In the event that the participating provider contract has not been reduced to writing or that the contract fails to contain the required prohibition, the HMO shall maintain a special deposit in cash or cash equivalent as follows:

(1) Every HMO that has incurred uncovered health care expenditures in an amount that exceeds ten percent (10%) of its total expenditures for health care services for the immediately preceding six months, shall do either of the following:

a. Calculate as of the first day of every month and maintain for the remainder of the month, cash or cash equivalents acceptable to the Commissioner, as an account to cover claims for uncovered health care expenditures at least equal to one hundred twenty percent (120%) of the sum of the following:

1. All claims for uncovered health care expenditures received for reimbursement, but not yet processed; and
2. All claims for uncovered health care expenditures denied for reimbursement during the previous 60 days; and
3. All claims for uncovered health care expenditures approved for reimbursement, but not yet paid; and
4. An estimate for uncovered health care expenditures incurred, but not reported; and
5. All claims for uncovered emergency services and uncovered services rendered outside the service area.

b. Maintain adequate insurance, or a guaranty arrangement approved in writing by the Commissioner, to pay for any loss to enrollees claiming reimbursement due to the insolvency of the HMO. The Commissioner shall approve a guaranty arrangement if the guaranteeing organization has been in operation for at least 10 years and has a net worth, including organization-related land,

buildings, and equipment, of at least fifty million dollars ($50,000,000); unless the Commissioner finds that the approval of such guaranty may be financially hazardous to enrollees. In order to qualify under the terms of this subsection, the guaranteeing organization shall (i) submit to the jurisdiction of this State for actions arising under the guarantee; (ii) submit certified, audited annual financial statements to the Commissioner; and (iii) appoint the Commissioner to receive service of process in this State.

(2) Whenever the reimbursements described in this subsection exceed ten percent (10%) of the HMO's total costs for health care services over the immediately preceding six months, the HMO shall file a written report with the Commissioner containing the information necessary to determine compliance with sub-subdivision (b)(1)a. of this section no later than 30 business days from the first day of the month. Upon an adequate showing by the HMO that the requirements of this section should be waived or reduced, the Commissioner may waive or reduce these requirements to such an amount as he deems sufficient to protect enrollees of the HMO consistent with the intent and purpose of this Chapter.

(3) Any cash or cash equivalents maintained pursuant to the terms of this section shall be maintained as a special deposit controlled by and administered by the Commissioner in accordance with the provisions of G.S. 58-7.5.

"*§ 57B-15.4. Continuation of benefits.*

(a) The Commissioner shall require that each HMO have a plan for handling insolvency, which plan allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to enrollees who are confined in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the Commissioner may require:

(1) Insurance to cover the expenses to be paid for benefits after an insolvency;

(2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the HMO's insolvency for which premium payment has been made and until the enrollees' discharge from inpatient facilities;

(3) Insolvency reserves such as the Commissioner may require;

(4) Letters of credit acceptable to the Commissioner;

(5) Any other arrangements to assure that benefits are continued as specified above.

"§ 57B-15.5. *Enrollment period.*

(a) In the event of an insolvency of an HMO upon order of the Commissioner, all other carriers that participated in the enrollment process with the insolvent HMO at a group's last regular enrollment period shall offer such group's enrollees of the insolvent HMO a 30-day enrollment period commencing upon the date of insolvency. Each carrier shall offer such enrollees of the insolvent HMO the same coverages and rates that it had offered to the enrollees of the group at its last regular enrollment period.

(b) If no other carrier had been offered to some groups enrolled in the insolvent HMO, or if the Commissioner determines that the other health benefit plan or plans lack sufficient health care delivery resources to assure that health care services will be available and accessible to all of the group enrollees of the insolvent HMO, then the Commissioner shall allocate the insolvent HMO's group contracts for such groups among all other HMOs that operate within a portion of the insolvent HMO's service area, taking into consideration the health care delivery resources of each HMO. Each HMO to which a group or groups are so allocated shall offer such group or groups that HMO's existing coverage that is most similar to each group's coverage with the insolvent HMO at rates determined in accordance with the successor HMO's existing rating methodology.

(c) The Commissioner shall also allocate the insolvent HMO's nongroup enrollees who are unable to obtain other coverage among all HMOs that operate within a portion of the insolvent HMO's service area, taking into consideration the health care delivery resources of each such HMO. Each HMO to which nongroup enrollees are allocated shall offer such nongroup enrollees that HMO's existing coverage for individual or conversion coverage as determined by his type of coverage in the insolvent HMO at rates determined in accordance with the successor HMO's existing rating methodology. Successor HMOs that do not offer direct nongroup enrollment may aggregate all of the allocated nongroup enrollees into one group for rating and coverage purposes.

"§ 57B-15.6. *Replacement coverage.*

(a) Any carrier providing replacement coverage with respect to group hospital, medical, or surgical expense or service benefits, within a period of 60 days from the date of discontinuance of a prior HMO contract or policy providing such hospital, medical or surgical expense or service benefits, shall immediately cover all enrollees who were validly covered under the previous HMO contract or policy at the date of discontinuance and who would otherwise be eligible for

coverage under the succeeding carrier's contract, regardless of any provisions of the contract relating to active employment or hospital confinement or pregnancy.

(b) Except to the extent benefits for the condition would have been reduced or excluded under the prior carrier's contract or policy, no provision in a succeeding carrier's contract of replacement coverage that would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preceded the effective date of the succeeding carrier's contract shall be applied with respect to those enrollees validly covered under the prior carrier's contract or policy on the date of discontinuance.

"§ 57B-15.7. *Incurred but not reported claims.*

(a) Every HMO shall, when determining liability, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, that are unpaid and for which such HMO is or may be liable; and to provide for the expense of adjustment or settlement of such claims.

(b) Such liabilities shall be computed in accordance with rules adopted by the Commissioner upon reasonable consideration of the ascertained experience and character of the HMO."

Sec. 14. G.S. 57B-17 reads as rewritten:

"§ *57B-17. Rehabilitation, liquidation, or conservation of health maintenance organization.*

Any rehabilitation, liquidation or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the Commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies, except that the provisions of Articles 17B and 17C of Chapter 58 of the General Statutes shall not apply to health maintenance organizations. The Commissioner may apply for an order directing him to rehabilitate, liquidate, or conserve a health maintenance organization upon one or more grounds set out in Article ~~17A~~ 46 of Chapter 58 of the General Statutes or when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this State.

For the purpose of determining the priority of distribution of general assets, claims of enrollees and claims of enrollees' beneficiaries have the same claims' priorities as established by G.S. 58-683, for policyholders and beneficiaries of other insurance companies. Any provider who is obligated by statute, agreement, or court order to hold enrollees harmless from liability for services provided and covered by an HMO has a priority of distribution next

subordinate to that of policyholders under G.S. 58-683, so that his status is after claims for unearned premiums, but before claims of general creditors. Providers who are not obligated to hold enrollees harmless shall be treated as general creditors and shall pursue claims against enrollees until final resolution of the estate of the liquidated HMO."

Sec. 15. G.S. 57B-2 reads as rewritten:

"(b) 'Enrollee' means an individual who ~~has been enrolled in~~ is covered by an HMO ~~a health care plan~~."

Sec. 16. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 777 **CHAPTER 777**

AN ACT TO ANNEX ADDITIONAL TERRITORY TO THE CITY OF WILSON.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the City of Wilson are extended to include the area within the following description:

BEGINNING at a point in the northerly right-of-way of SR 1320 (Airport Road), said point being described as the southerly property corner of Hope Park section I as recorded in Plat Book 16, Page 230 of the Wilson County Registry; Thence running from said point of BEGINNING and along the northerly right-of-way of SR 1320 (Airport Road) N 33° 17' 39" E 20.90 feet to a point, cornering; Thence crossing Airport Road and running S 50° 01' 38" E 60.00 feet to a point in the southerly right-of-way of SR 1320 (Airport Road), cornering; Thence running with the southerly right-of-way of SR 1320 (Airport Road) a chord bearing and distance of S 33° 10' 03" W 458.74 feet to a point, cornering; Thence crossing SR 1320 (Airport Road) and running N 59° 32' 25" W 742.36 feet, N 33° 11' 29" E 464.59 feet, S 57° 51' 45" E 521.85 feet, N 34° 11' 26" E 20.02 feet and S 51° 49' 47" E 160.20 feet to a point in the northerly right-of-way of SR 1320 (Airport Road), said point being the point of BEGINNING and containing 7.79 acres.

Sec. 2. This act shall become effective August 31, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 2 CHAPTER 778

AN ACT TO APPROPRIATE FUNDS FOR THE IMPLEMENTATION OF THE SCHOOL IMPROVEMENT AND ACCOUNTABILITY ACT OF 1989.

The General Assembly of North Carolina enacts:

Section 1. Title of Act. -- This act may be referred to as the "School Improvement and Accountability Act of 1989."

Sec. 2. Legislative Intent. -- It is the intent of the General Assembly that this act be implemented with a minimum of regulations.

Sec. 3. Performance-based Accountability Program. -- Article 16 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 4. Performance-based Accountability Program.

"§ *115C-238.1. Performance-based Accountability Program; development and implementation by State Board.*

The State Board of Education shall develop and implement a Performance-based Accountability Program. The primary goal of the Program shall be to improve student performance. The State Board of Education shall adopt:

(1) Procedures and guidelines through which, beginning with the 1990-91 fiscal year, local school administrative units may participate in the Program;

(2) Guidelines for developing local school improvement plans with three-to-five year student performance goals and annual milestones to measure progress in meeting those goals; and

(3) A set of student performance indicators for measuring and assessing student performance in the participating local school administrative units. These indicators may include attendance rates, dropout rates, test scores, parent involvement, and post-secondary outcomes.

"§ *115C-238.2. Local participation in the Program voluntary; the benefits of local participation.*

(a) Local school administrative units may, but are not required to, participate in the Performance-based Accountability Program.

(b) Local school administrative units that participate in the Performance-based Accountability Program:

(1) Are exempt from State requirements to submit reports and plans, other than local school improvement plans, to the Department of Public Education; they are not exempt from federal requirements to submit reports and plans to the Department.

(2) Are subject to the performance standards but not the opportunity standards or the staffing ratios of the State Accreditation Program. The performance standards in the State Accreditation Program, modified to reflect the results of end-of-course and end-of-grade tests, may serve as the basis for developing the student performance indicators adopted by the State Board of Education pursuant to G.S. 115C-238.1.

(3) May receive funds for differentiated pay for teachers and administrators, in accordance with G.S. 115C-238.4, if they elect to participate in a differentiated pay plan.

(4) May be allowed increased flexibility in the expenditure of State funds, in accordance with G.S. 115C-238.5.

(5) May be granted waivers of certain State laws, regulations, and policies that inhibit their ability to reach local accountability goals, in accordance with G.S. 115C-238.6(a).

(6) Shall continue to use the Teacher Performance Appraisal Instrument (TPAI) for evaluating beginning teachers during the first three years of their employment; they may, however, develop other evaluation approaches for teachers who have attained career status.

"§ *115C-238.3. Elements of local plans.*

(a) The board of education of a local school administrative unit that elects to participate in the Program shall submit a local school improvement plan to the State Superintendent of Public Instruction before April 15 of the fiscal year preceding the fiscal year in which participation is sought. The local board of education shall actively involve a substantial number of teachers, school administrators, and other school staff in developing the local school improvement plan.

(b) The local school improvement plan shall set forth (i) the student performance goals established by the local board of education for the local school administrative unit and (ii) the unit's strategies and plans for attaining them.

The performance goals for the local school administrative unit shall address specific, measurable goals for all student performance indicators adopted by the State Board. Factors that determine gains in achievement vary from school to school; therefore, socioeconomic factors and previous student performance indicators shall be used as the basis of the local school improvement plan.

The strategies for attaining the local student performance goals shall be based on plans for each individual school in the local school administrative unit. The principal of each school and his staff shall

develop a plan to address student performance goals appropriate to the school from those established by the local board of education.

(c) The local school administrative unit shall consider a plan for differentiated pay. The local plan shall include a plan for differentiated pay, in accordance with G.S. 115C-238.4, unless the local school administrative unit elects not to participate in any differentiated pay plan.

(d) The local plan may include a request for a waiver of State laws, regulations, or policies. The request for a waiver shall identify the State laws, regulations, or policies that inhibit the local unit's ability to reach its local accountability goals and shall explain how a waiver of those laws, regulations, or policies will permit the local unit to reach its local goals.

"§ *115C-238.4. Differentiated pay.*

(a) Local school administrative units may include, but are not required to include, a differentiated pay plan for certified instructional staff, certified instructional support staff, and certified administrative staff as a part of their local school improvement plans. Units electing to include differentiated pay plans in their school improvement plans shall base their differentiated pay plans on:

(1) The Career Development Pilot Program, G.S. 115C-363 *et seq.*;

(2) The Lead Teacher Pilot Program, G.S. 115C-363.28 >*et seq.*;

(3) A locally designed school-based performance program, subject to limitations and guidelines adopted by the State Board of Education;

(4) A differentiated pay plan that the State Board of Education finds has been successfully implemented in another state; or

(5) A locally designed plan including any combination or modification of the foregoing plans.

(b) Support among affected staff members is essential to successful implementation of a differentiated pay plan; therefore, a local board of education that decides that a differentiated pay plan should be included in its local school improvement plan shall present a proposed differentiated pay plan to affected staff members for their review and vote. The vote shall be by secret ballot. The local board of education shall include the proposed differentiated pay plan in its local school improvement plan only if the proposed plan has the approval of a majority of the affected paid certificated instructional and instructional support staff and a majority of the affected certificated administrators.

Every three years after a differentiated pay plan receives such approval, the local board of education shall present a proposed plan to continue, discontinue, or modify that differentiated pay plan to affected

staff members for their review and vote. The vote shall be by secret ballot. The local board of education shall include the proposed plan in its local school improvement plan only if the proposed plan has the approval of a majority of the affected paid certificated instructional and instructional support staff and a majority of the affected certificated administrators.

(c) Local school administrative units electing to participate in a differentiated pay plan shall receive State funds according to the terms of the plan but not to exceed:

(1) 1990-91: two percent (2%) of teacher and administrator salaries, and the employer's contributions for social security and retirement;

(2) 1991-92: three percent (3%) of teacher and administrator salaries, and the employer's contributions for social security and retirement;

(3) 1992-93: four percent (4%) of teacher and administrator salaries, and the employer's contributions for social security and retirement; and

(4) 1993-94 and thereafter: seven percent (7%) of teacher and administrator salaries, and the employer's contributions for social security and retirement.

Any differentiated pay plan developed in accordance with this section shall be implemented within State and local funds available for differentiated pay.

(d) Attainment of the equivalent of Career Status I shall be rewarded through a new salary schedule that provides a salary differential when a certified educator successfully completes his probationary period.

(e) Any additional compensation received by an employee as a result of the unit's participation in the Program shall be paid as a bonus or supplement to the employee's regular salary. If an employee in a participating unit does not receive additional compensation, such failure to receive additional compensation shall not be construed as a demotion, as that term is used in G.S. 115C-325.

"*§ 115C-238.5. Flexible funding.*

For fiscal years beginning with the 1990-91 fiscal year, the State Board of Education, only upon the recommendation of the State Superintendent, shall increase flexibility in the use of State funds for schools by combining into a single funding category the existing categories for instructional materials, supplies and equipment, textbooks, testing support, and drivers education except for funds for classroom teachers of drivers education. Only local school administrative units electing to participate in the Performance-based

Accountability Program shall be eligible to receive this flexible funding.

Local boards of education shall provide maximum flexibility in the use of funds to individual schools to enable them to accomplish their individual schools' goals.

"*§ 115C-238.6. Approval of local school administrative unit plans by the State Superintendent; conditions for continued participation.*

(a) Prior to June 30 each year, the State Superintendent shall review local school improvement plans submitted by the local school administrative units in accordance with policies and performance indicators adopted by the State Board of Education. If the State Superintendent approves the plan for a local school administrative unit, that unit shall participate in the Program for the next fiscal year.

If a local plan contains a request for a waiver of State laws, regulations, or policies, in accordance with G.S. 115C-238.3(e), the State Superintendent shall determine whether and to what extent the identified laws, regulations, or policies should be waived. The State Superintendent shall present that plan and his determination to the State Board of Education. If the State Board of Education deems it necessary to do so to enable a local unit to reach its local accountability goals, the State Board, only upon the recommendation of the State Superintendent, may grant waivers of:

(1) State laws pertaining to class size, teacher certification, assignment of teacher assistants, the use of State-adopted textbooks, and the purposes for which State funds for the public schools may be used, and

(2) All State regulations and policies, except those pertaining to State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-325, health and safety codes, compulsory school attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System.

(b) Local school administrative units shall continue to participate in the Program and receive funds for differentiated pay, if their local plans call for differentiated pay, so long as (i) they demonstrate satisfactory progress toward student performance goals set out in their local school improvement plans; or (ii) once their local goals are met, they continue to achieve their local goals and they otherwise demonstrate satisfactory performance, as determined by the State Superintendent in accordance with guidelines set by the State Board of Education.

If the local school administrative units do not achieve their goals after two years, the Department of Public Instruction shall provide them with technical assistance to help them meet their goals. If after one additional year they do not achieve their goals, the State Board of Education shall decide what steps shall be taken to improve the education of students in the unit."

Sec. 4. End-of-course and End-of-grade Tests. -- G.S. 115C-174.11(c) reads as rewritten:

"~~(c) Competency Based Curriculum Testing. -- In order to provide achievement information and educational accountability as part of the Basic Education Program, the State Board of Education may acquire, in the most cost-efficient manner, achievement tests and test information to evaluate achievement in those grades and courses as specified in the Basic Education Program. Information from these tests may be used as one criterion by teachers and local school personnel in arriving at student grades and in making administrative decisions.~~

(c) End-of-course and End-of-grade Tests. -- The State Board of Education shall adopt a system of end-of-course and end-of-grade tests for grades three through 12. These tests shall be designed to measure progress toward selected competencies, especially core academic competencies, described in the Standard Course of Study for appropriate grade levels. With regard to students who are identified as not demonstrating satisfactory academic progress, end-of-course and end-of-grade test results shall be used in developing strategies and plans for assisting those students in achieving satisfactory academic progress."

Sec. 5. Testing for Comparisons of Student Achievement. -- Effective July 1, 1992, G.S. 115C-174.11(a) reads as rewritten:

"(a) Annual Testing Program. ~~In order to assess the effectiveness of the educational process, and to ensure that each pupil receives the maximum educational benefit from the educational process, the State Board of Education shall implement an annual statewide testing program in basic subjects. It is the purpose of this testing program to help local school systems and teachers identify and correct student needs in basic skills rather than to provide a tool for comparison of individual students or to evaluate teacher performance. The annual testing program shall be conducted each school year for the third, sixth and eighth grades. Students in these grade levels who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing program if special testing procedures are required for testing such students. The State Board of Education shall select annually the type or types of tests to be used in the testing program.~~

The State Board of Education shall ~~also~~ adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests. The State Board of Education shall report to the Joint Legislative Commission on Governmental Operations prior to May 1, 1988, and to the Senate and House Appropriations Committees on Education prior to March 1, 1989, on the assessment instruments it develops.

If the State Board of Education finds that testing in grades other than the first and second grade is necessary to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states."

Sec. 6. Annual Report Cards for Schools. -- G.S. 115C-12(9) reads as rewritten:

"(9) Miscellaneous Powers and Duties. -- All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.

b. To adopt and supply textbooks.

c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government.

The Board shall develop a State accreditation program that meets or exceeds the standards and requirements of the Basic Education Program. The Board shall require each local school administrative unit to comply with the State accreditation program to the extent that funds have been made available to the local school administrative unit for implementation of the Basic Education Program.

The Board shall use the State accreditation program to monitor the implementation of the Basic Education Program.

c1. To issue an annual 'report card' for the State and for each local school administrative unit, assessing each

unit's efforts to improve student performance and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account demographic, economic, and other factors that have been shown to affect student performance.

d. To formulate rules and regulations for the enforcement of the compulsory attendance law.

e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters."

Sec. 7. Existing Career Development and Lead Teacher Pilot Programs.

(a) Notwithstanding the provisions of Article 24B of Chapter 115C of the General Statutes, Article 24D of Chapter 115C of the General Statutes, or any other provision of law, funding for the career development pilot projects and the lead teacher pilot projects shall continue through the 1989-90 fiscal year: Provided, however, that any additional compensation received by an employee as a result of the unit's participation in the pilot program for the 1989-90 fiscal year and for subsequent fiscal years shall be paid as a bonus or supplement to the employee's regular salary.

Funding of these pilot projects shall continue for subsequent fiscal years only if the pilot units successfully submit local school improvement plans pursuant to the Performance-based Accountability Program, during the 1989-90 school year and during subsequent school years.

(b) Beginning with the 1993-94 fiscal year, the career development and the lead teacher pilot units shall receive only the amount of State funds available for school units participating in a differentiated pay plan pursuant to the School Improvement and Accountability Act of 1989; they shall receive no State funding as career development pilot units or lead teacher pilot units.

(c) The local school improvement plan for each career development pilot program shall include a schedule of modifications to the career development program. This schedule shall result in an incremental reduction or increase, as appropriate, in the amount of funds allocated for differentiated pay so that, for the 1993-94 fiscal

year and subsequent fiscal years, the cost of the differentiated pay plan equals the amount of State and local funds available for differentiated pay for school units participating in differentiated pay plans pursuant to the School Improvement and Accountability Act of 1989.

(d) If an employee in a career development pilot unit is recommended for Career Status I or II and that status is approved by the local board of education prior to the beginning of the 1989-90 school year, the local board of education may pay that employee a bonus or supplement to his regular salary. For the 1989-90 fiscal year only, the local board of education may use any State or local funds available to it for the career development pilot program to pay these bonuses or supplements.

(e) Effective at the beginning of the 1989-90 school year, an employee may be considered for Career Status II no earlier than his third year in Career Status I; an employee may be considered for Career Status III no earlier than his third year in Career Status II.

(f) Any career ladder pilot project in a school unit that has resulted from a merger of school units, within the last calendar year preceding the effective date of this act, may be modified by the local school board, upon the recommendation of the State Superintendent of Public Instruction and with the approval of the State Board of Education. This modification shall require no more funds than allocated to the particular project by the State Board of Education from funds appropriated to the State Board of Education in Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989.

Sec. 8. The Department of Public Education shall report prior to May 1, 1990, and annually thereafter, on the implementation of the School Improvement and Accountability Act of 1989, to the chairmen of the Senate and House of Representatives committees on education, appropriations, and appropriations on education.

Sec. 9. Nothing in this act shall be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 789 **CHAPTER 779**

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE PRESIDENT OF THE SENATE.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President of the Senate; and

Whereas, the President of the Senate has made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Dr. Ricky R. Sides of Forsyth County is appointed to the State Board of Chiropractic Examiners for a term to expire June 30, 1992.

Sec. 2. William Cranford Fann of Sampson County is appointed to the Sheriffs' Education and Training Standards Commission for a term to expire June 30, 1991.

Sec. 3. Jeanne Overton Paine of Moore County is appointed to the Board of Trustees of the North Carolina School of Science and Mathematics for a term to expire June 30, 1993.

Sec. 4. John G. Hutchens of Guilford County is appointed to the State Board of Transportation for a term to expire June 30, 1991.

Sec. 5. James S. Fulghum III, M.D. of Wake County and Tom O. Palmer of Edgecombe County are appointed to the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services for terms to expire June 30, 1991.

Sec. 6. William Michael Graham of Lee County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term to expire June 30, 1991. This is the categorical appointment for an employee enrolled in the Plan. Everette Lindsay Peterson II of Sampson County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term to expire June 30, 1991.

Sec. 7. Daniel B. Gray of Dare County is appointed to the North Carolina Seafood Industrial Park Authority for a term to expire June 30, 1991.

Sec. 8. Daniel J. Good of Rutherford County is appointed to the Alarm Systems Licensing Board for a term to expire June 30, 1992. This is the public member categorical appointment. Bruce D. Michelsen of Durham County is appointed to the Alarm Systems Licensing Board for a term to expire June 30, 1990. This is the categorical appointment for a licensee.

Sec. 9. Joseph D. Teachey, Jr., of Duplin County, John C. Howard of Lenoir County and E. Dean Chrisawn of Yancey County are appointed to the North Carolina Agricultural Finance Authority for terms to expire June 30, 1992.

Sec. 10. Marie T. Gardner of Nash County is appointed to the North Carolina Museum of Art Board of Trustees for a term to expire June 30, 1991.

Sec. 11. Andrew J. (Jack) Waring of Iredell County is appointed to the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan for a term to expire June 30, 1991.

Sec. 12. Douglas S. Boykin of Pender County and Arthur W. Cooper of Wake County are appointed to the Environmental Management Commission for terms to expire June 30, 1991.

Sec. 13. William Brantley of Nash County is appointed to the Governor's Advocacy Council for Persons with Disabilities for a term to expire June 30, 1991.

Sec. 14. Jeff D. Rogers of Guilford County is appointed to the Private Protective Services Board for a term to expire June 30, 1992.

Sec. 15. Earl L. Honeycutt of Sampson County is appointed to the North Carolina Criminal Justice Education and Training Standards Commission for a term to expire June 30, 1991.

Sec. 16. David G. Olmstead of Wake County is appointed to the Board of Trustees of the Teachers' and State Employees' Retirement System for a term to expire June 30, 1991.

Sec. 17. Jimmy Lewis Moore of Alexander County is appointed to the North Carolina Medical Database Commission for a term to expire June 30, 1990. This is the categorical appointment for a representative of a business with fewer than 200 employees. Dr. James R. Dineen of New Hanover County is appointed to the Medical Database Commission for a term to expire June 30, 1992. This is the health care provider categorical appointment. Sandra B. Greene of Orange County is appointed to the Medical Database Commission for a term to expire June 30, 1992. This is the categorical appointment for a representative of Blue Cross and Blue Shield of North Carolina.

Sec. 18. Gary Phillips of Nash County and Robert P. Holding III of New Hanover County are appointed to the Board of Public Telecommunications Commissioners for terms expiring June 30, 1991.

Sec. 19. William T. (Bill) Boyd of Randolph County is appointed to the North Carolina Housing Finance Agency Board of Directors for a term to expire June 30, 1993. This is the categorical appointment for a person experienced in home building. Clyde T. Wood of Cumberland County and M. Charles Mullen of Nash County are appointed to the North Carolina Housing Finance Agency Board of Directors for terms to expire June 30, 1991. These are the at-large categorical appointments.

Sec. 20. Robert L. Stowe III of Gaston County is appointed to the North Carolina Board of Science and Technology for a term to expire June 30, 1991.

Sec. 21. Ralph A. Kimmel of Forsyth County and Peggy H. Shoaf of Davidson County are appointed to the North Carolina Center for the Advancement of Teaching for terms to expire June 30, 1993.

Sec. 22. Thomas F. Ellis of Wake County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term to expire June 30, 1991.

Sec. 23. Roger W. Isaac of Catawba County is appointed to the North Carolina Health Insurance Trust Commission for a term to expire June 30, 1992. This is the categorical appointment for a representative of a small business providing health care for its employees. Kenneth E. Morris III of Craven County is appointed to the North Carolina Health Insurance Trust Commission for a term to expire June 30, 1992. This is the licensed health care insurer categorical appointment.

Sec. 24. Cynthia S. Story of Pitt County is appointed to the Child Day Care Commission for a term to expire June 30, 1991. This is the categorical appointment for a parent of a child enrolled in day care. Marleen A. Carter of Mecklenburg County is appointed to the Child Day Care Commission for a term to expire June 30, 1991. This is the public member categorical appointment.

Sec. 25. Robert Bruce Hoyle of Rutherford County is appointed to the State Fire Commission for a term to expire June 30, 1990.

Sec. 26. Dr. George L. Bradley of Gaston County is appointed to the Governor's Waste Management Board for a term to expire June 30, 1991.

Sec. 27. Carl H. Ricker of Buncombe County is appointed to the State Building Commission for a term to expire June 30, 1992. This is the public member categorical appointment.

Sec. 28. Arnold Locklear of Robeson County is appointed to the North Carolina State Commission of Indian Affairs for a term to expire June 30, 1991.

Sec. 29. Diedre Dianne Rains of Wake County is appointed to the State Board of Cosmetic Art Examiners for a term to expire June 30, 1990.

Sec. 30. J. Chalmers D. Bailey of Nash County and Joseph P. Riddle, Jr., of Cumberland County are appointed to the North Carolina State Ports Authority for terms to expire June 30, 1991.

Sec. 31. Marian Rebecca Stone Garrett of Alamance County is appointed to the State Board of Therapeutic Recreation Certification for a term to expire June 30, 1992.

Sec. 32. Unless otherwise specified, all appointments made by this act are for terms to begin upon ratification.

Sec. 33. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 1184 **CHAPTER 780**

AN ACT TO ALLOW THE CREATION OF REGIONAL SPORTS AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 20 of Chapter 160A of the General Statutes is amended to add a new Part to read as follows:

"Part 3. Regional Sports Authorities.

"*§ 160A-479. Creation of authority; definition.*

(a) Any two or more units of local government may create a regional sports authority by adopting identical concurrent resolutions to that effect in accordance with the provisions of this Part. The concurrent resolutions creating a regional sports authority, and any amendments thereto will be referred to in this Part as the 'charter' of the regional sports authority. For the purposes of this Part, 'unit of local government' means a county, city or consolidated city-county.

(b) Any regional sports authority created pursuant to this Part shall be a body corporate and politic.

"*§ 160A-479.1. Purpose of the authority.*

The purpose of a regional sports authority shall be to research, design, construct, provide, finance, operate, improve, and maintain facilities for public participation and enjoyment of sports, fitness, health and recreational activities of as many different types and kinds as possible. The primary purpose of any and all such facilities shall be the conduct of sports events but use of these facilities need not be limited to such.

"*§ 160A-479.2. Jurisdiction of the authority.*

(a) The territorial jurisdiction of any authority created pursuant to this Part shall be coterminous with the boundaries of the respective units of local government creating and participating in the authority.

(b) The jurisdiction of any authority created pursuant to this Part shall include any and all currently existing public sports facilities operating within its territorial jurisdiction to the extent that any person or governmental entity owning or controlling such facilities has reached mutual and written agreement with an authority for the operation and maintenance of such facilities by the authority.

(c) The jurisdiction of an authority shall also include any and all new public sports facilities within the regional authority's territorial jurisdiction developed specifically for operation and maintenance by an authority with the agreement of an authority.

"*§ 160A-479.3. Membership.*

Each unit of local government initially adopting a concurrent resolution under G.S. 160A-479 shall become a member of the regional authority. Thereafter, any local government may join the regional authority by ratifying its charter and by being admitted by a majority vote of the existing members. All of the rights and privileges of membership in a regional sports authority shall be exercised on behalf of its member governments by their delegates to the authority.

"*§ 160A-479.4. Contents of charter.*

The charter of a regional sports authority shall:

(1) Specify the name of the authority;

(2) Establish the powers, duties, and functions that it may exercise and perform;

(3) Establish the number of delegates to represent the member governments, fix their terms of office, provide methods for filling vacancies, and prescribe the compensation and allowances, if any, to be paid to delegates;

(4) Set out the method of determining the financial support that will be given to the authority by each member government;

(5) Establish a method for amending the charter, and for dissolving the authority and liquidating its assets and liabilities.

In addition, the charter may, but need not, contain rules and regulations for the conduct of authority business and any other matter pertaining to the organization, powers, and functioning of the authority that the member governments deem appropriate.

"*§ 160A-479.5. Organization of authority.*

Upon its creation, a regional sports authority shall meet at a time and place agreed upon by its member governments and shall organize by electing a chairman and any other officers that the charter may specify or the delegates may deem advisable. The authority shall then adopt bylaws for the conduct of its business. All meetings of the authority shall be open to the public.

"*§ 160A-479.6. Withdrawal from authority.*

Any member government may withdraw from a regional sports authority at the end of any fiscal year by giving at least 60 days' written notice to each of the other members. A withdrawal does not affect the validity of any revenue bonds or notes, and any revenue from sports facilities in the area of the member government that was pledged in payment of bonds or notes issued before the date of notice

of withdrawal remains pledged for that purpose until the bonds and notes and interest on the bonds and notes have been paid. Withdrawal of a member government shall not dissolve the authority if at least two members remain.

"§ *160A-479.7. Powers of authority.*

(a) The charter may confer on the regional sports authority any or all of the following powers:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the authority), and any private or civic agency;

(2) To employ personnel;

(3) To contract with consultants;

(4) To contract with the State of North Carolina, any other state, the United States of America, or any agency thereof, for services;

(5) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties, not inconsistent with this Part;

(6) To adopt an official seal and alter the same at pleasure;

(7) To acquire and maintain an administrative building or office at such place or places as it may determine, which building or office may be used or owned alone or together with any municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined;

(8) To sue and be sued in its own name, and to plead and be impleaded;

(9) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;

(10) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(11) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(12) To pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign, or

otherwise grant a security interest in any money, rents, charges, or other revenues and any proceeds derived by an authority from any and all sources;

(13) To issue revenue bonds of the authority to finance regional sports and recreational facilities, including support facilities, to refund any revenue bonds or notes issued by the authority, whether or not in advance of their maturity or earliest redemption date, or to provide funds for other corporate purposes of the authority.

(14) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;

(15) To develop and make data, plans, information, surveys, and studies of public sports and recreation facilities within the territorial jurisdiction of an authority, to prepare and make recommendations in regard thereto;

(16) To study and plan for new and improved major regional sports and recreational facilities including but not limited to arenas, stadia, gymnasia, natatoria, pitches, fields, water courses, and other areas for the conduct of sports and recreational activities. These facilities should be of such sizes and in such locations that they will be adequate to serve the population of the entire jurisdiction of the authority (and beyond) to the extent possible;

(17) To design any new such facilities so they include such equipment and design that efficiency, cost, accessibility, utility, and usability of such facilities will be maximized;

(18) To have sports facilities grouped into complexes or separated as an authority may see fit, and such facilities may include ancillary support facilities including but not limited to those for administration, sports science, sports medicine, training, museums, meeting rooms and conference centers, accommodations, food services, retail shops, theatres, video services, schools, and educational services.

(19) To operate the facilities in such a way as to make them as accessible as possible for rental and use by the public while balancing the need for as many of the facilities as possible (particularly any arenas and stadia) to operate annually without a deficit (exclusive of any debt service);

(20) To operate such facilities together with the State, any entity of the State, or local government as appropriate to maintain

a high profile and promotional value for North Carolina and the region encompassed by an authority and to attract as many major regional, national, and international tournaments, events, championships training centers, training camps, and headquarters for the governance of various sports, associations, and events as reasonable and possible;

(21) To generate a significant and continuing positive economic impact on the region and State through the construction and operation of facilities and conduct of events and activities within the facilities;

(22) To set and collect such fees and charges for use of such facilities as is reasonable to offset operating costs of said facilities and yet enable said facilities to be affordable to and used by as much of the regional and State population as possible;

(23) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals in the same manner as any other person or operating unit of any other person;

(24) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of an authority and to fix and pay their compensation from funds available to an authority therefor and to select and retain subject to approval of the Local Government Commission, the financial consultants, underwriters and bond attorneys to be associated with the issuance of any revenue bonds and to pay for services rendered by underwriters, financial consultants, or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and

(25) To do all acts and things necessary, convenient, or desirable to carry out the purposes, and to exercise the powers granted to an authority herein.

(b) The charter may not confer the following powers on the regional sports authority:

(1) To issue general obligation bonds or otherwise incur a debt that is secured by the full faith and/or credit of the authority, a member government of the authority, or the State.

(2) To levy a property tax or other tax.

(3) To acquire property by eminent domain.

"§ *160A-479.8. Fiscal accountability.*

A Regional Sports Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes of North Carolina.

"§ *160A-479.9. Funds.*

(a) The establishment and operation of an authority as herein authorized are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of an authority.

(b) The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate or lease any of their interests in any property to an authority.

"§ *160A-479.10. Controlling provisions.*

Insofar as the provisions of this Part are not consistent with the provisions of any other law, public or private, the provisions of this Part shall be controlling.

"§ *160A-479.11. Conflicts of interest of public officials.*

Members, officers, and employees of any authority created under this Part shall be subject to the provisions of G.S. 14-234.

"§ *160A-479.12. Issuance of revenue bonds and notes.*

The Local Government Revenue Bond Act, G.S. Chapter 159, Article 5, governs the issuance of revenue bonds by an authority. G.S. Chapter 159, Article 9, governs the issuance of notes in anticipation of the sale of revenue bonds.

"§ *160A-479.13. Acquisition of property.*

In addition to the powers hereinbefore granted, an authority may, in its charter, be granted continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method, the fee or any lesser interest in real or personal property for use by an authority.

"§ *160A-479.14. Tax exemption.*

(a) The property of an authority, both real and personal, its acts, activities and income shall be exempt from any tax or tax obligation; in the event of any lease of authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee.

(b) Otherwise, however, for the purpose of taxation, when property of an authority is leased to private parties solely for the purpose of an authority, the acts and activities of an authority for the purpose of exemption of the lessee shall be considered as the acts and activities of the private parties.

(c) The interest on revenue bonds or notes issued by an authority shall be exempt from State taxes.

"§ *160A-479.15. Removal and relocation of utility structures.*

(a) An authority may require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances or facilities in, upon, under, over, across or along any land or facility where an authority has the right to own, construct, operate or maintain its facilities to remove or relocate such installation, structures, equipment, apparatus, appliances or facilities from their location.

(b) If the owner or operator thereof fails or refuses to remove or relocate them, an authority may proceed to do so.

(c) An authority may provide the necessary new locations or an authority may also acquire the necessary new locations by purchase or otherwise, but not by eminent domain.

(d) An authority shall reimburse the public utility, railroad or other public service corporation, for the cost of relocations which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances.

"§ *160A-479.16. Advances.*

Any member government unit may make advances, from any moneys that may be available for such purpose, in connection with the creation of the authority and to provide for the preliminary expenses of such authority. Any such advances may be repaid to such participating units of local government from the proceeds of the revenue bonds issued by such authority, if capital in nature, or from other available funds of the authority.

"§ *160A-479.17. Annexation.*

The annexation by a member government which is a city of areas lying outside of the territorial jurisdiction of the authority shall make such annexed area a part of the territorial jurisdiction of the authority, and such area shall be subject to all debts and all obligations thereof."

Sec. 1.1. G.S. 105-164.14(c), as amended by Section 5 of Chapter 168 of the 1989 Session Laws and Chapter 251 of the 1989 Session Laws, reads as rewritten:

"(c) Upon receipt of timely applications for refund, the Secretary of Revenue shall make refunds annually to all governmental entities, as hereinafter defined, of sales and use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(c), by said governmental entities on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by such

governmental entities on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired which is owned or leased by such governmental entities shall be construed as sales or use tax liability incurred on direct purchases by such governmental entities, and such entities may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to any governmental entities not specifically named herein. In order to receive the refund herein provided for, governmental entities shall file a written request for said refund within six months of the close of the fiscal year of the governmental entities seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Secretary may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may otherwise require. The term 'governmental entities,' for the purposes of this subsection, shall mean all counties, incorporated cities and towns, water and sewer authorities created and existing under the provisions of Chapter 162A of the General Statutes, lake authorities created by a board of county commissioners pursuant to an act of the General Assembly, sanitary districts, regional councils of governments created pursuant to G.S. 160A-470, area mental health, mental retardation, and substance abuse authorities (other than single-county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes, district health departments, regional planning and economic development commissions created pursuant to G.S. 158-14, regional sports authorities created pursuant to G.S. 160A-479, regional economic development commissions created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A-391, metropolitan sewerage districts and metropolitan water districts in this State, the North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes, the North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes, and the Rockingham County Airport Authority."

Sec. 2. G.S. 159-81(1) reads as rewritten:

"(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional sports authority, and airport authority, a joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of

the General Statutes, but not any other forms of local government."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 1096 **CHAPTER 781**

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE PRESIDENT PRO TEMPORE OF THE SENATE.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate; and

Whereas, the Speaker of the House of Representatives and the President Pro Tempore of the Senate have made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. APPOINTMENTS OF THE SPEAKER

Section 1. Johnnie Evans of Cumberland County, Henry W. Little of Anson County and Gordon Peedin of Johnston County are appointed to the North Carolina Agricultural Finance Authority for terms to expire on June 30, 1992.

Sec. 2. Van G. Dickens of Cumberland County is appointed to the Alarm Systems Licensing Board for a term to expire on June 30, 1992. This is the public member categorical appointment. David W. Carter of Wake County is appointed to the Alarm Systems Licensing Board for a term to expire on June 30, 1991. This is the categorical appointment for a person licensed under G.S. Chapter 74D.

Sec. 3. Katherine B. Gaston of Gaston County is appointed to the Board of Trustees of the North Carolina Museum of Art for a term to expire on June 30, 1991.

Sec. 4. Henry A. Vermillion of Wake County is appointed to the Committee on Art in State Buildings for a term to expire on June 30, 1991.

Sec. 5. Finley Pace, Jr. of Henderson County is appointed to the State Building Commission for a term to expire on June 30, 1992. This is the categorical appointment for a licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings.

Sec. 6. Samuel H. Henning of Randolph County is appointed to the Child Day Care Commission of the Department of Human Resources for a term to expire on June 30, 1991. This appointment is the one affiliated with a nonprofit day care facility or plan. Belita Ann Whitman of Wayne County is appointed to the Child Day Care Commission of the Department of Human Resources for a term to expire on June 30, 1991. This appointment is the one affiliated with a for profit day care facility or plan.

Sec. 7. Dr. Earl Barbour of Guilford County is appointed to the State Board of Chiropractic Examiners for a term to expire on June 30, 1991.

Sec. 8. Joyce Lewis Mason of Carteret County is appointed to the State Board of Cosmetic Art Examiners for a term to expire on June 30, 1992.

Sec. 9. Charles P. Farris, Jr. of Wilson County is appointed to the North Carolina Criminal Justice Education and Training Standards Commission for a term to expire on June 30, 1991.

Sec. 10. Ronald Pegram of Forsyth County is appointed to the Board of Trustees of the North Carolina Public Employees Deferred Compensation Plan for a term to expire on June 30, 1991.

Sec. 11. Edward Theodore Smith of Wake County is appointed to the Governor's Advocacy Council for Persons with Disabilities for a term to expire on June 30, 1991.

Sec. 12. Lawrence Ray Zucchino of Wake County and Michael K. Barnes of Wilson County are appointed to the Environmental Management Commission for terms to expire on June 30, 1991.

Sec. 13. H. T. Taylor, Sr. of Robeson County is appointed to the State Fire Commission for a term to begin on October 1, 1989, and to expire on September 30, 1992.

Sec. 14. John R. Griffin, Jr. of Durham County is appointed to the North Carolina Health Insurance Trust Commission for a term to expire June 30, 1992. This is the categorical appointment for a domestic health care insurer licensed pursuant to Chapter 57 of the General Statutes.

Sec. 15. Thomas L. Council of Cumberland County is appointed to the North Carolina Housing Finance Agency Board of Directors for a term to expire on June 30, 1991. This is the categorical appointment for a licensed real estate broker. Karl J. Mendenhall of Mecklenburg County is appointed to the North Carolina Housing Finance Agency Board of Directors for a term to expire on June 30, 1991. This is the categorical appointment for a mortgage-servicing representative. Mark E. Tipton of Wake County and David S. Morgan of Rowan County are appointed to the North Carolina Housing Finance Agency Board of Directors for terms to

expire on June 30, 1991. These are the two appointments without statutory requirement for special qualifications.

Sec. 16. Jim R. Lowry of Polk County is appointed to the North Carolina State Commission of Indian Affairs for a term to expire on June 30, 1991.

Sec. 17. John T. McGee of Orange County is appointed to the Information Technology Commission for a term to begin on August 5, 1989, and to expire June 30, 1993.

Sec. 18. Hilda A. Highfill of Wake County and Thomas E. Terrell, Jr. of Guilford County are appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for terms expiring June 30, 1991.

Sec. 19. Francis Kiger of Forsyth County is appointed to the North Carolina Medical Database Commission for a term to expire on June 30, 1992. This is the categorical appointment for a nurse.

Sec. 20. Ben W. Aiken of Wake County and Jo Anne Davis of Dare County are appointed to the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services for terms to expire on June 30, 1991.

Sec. 21. John Hunter of Forsyth County is appointed to the North Carolina Milk Commission for a term to expire on June 30, 1991. This is the categorical appointment for a proprietary processor position.

Sec. 22. V. Diane Gibbs of Nash County, Dr. Richard L. Brownell of Rowan County and Bonnie K. Ratchford Blair of Gaston County are appointed to the North Carolina Nursing Scholars Commission for terms expiring July 1, 1993.

Sec. 23. William Wallace Respess of Caldwell County and Lewis Sneed High of Cumberland County are appointed to the North Carolina State Ports Authority for terms to expire on June 30, 1991.

Sec. 24. Joel Garth Locklear of Robeson County is appointed to the Private Protective Services Board for a term to expire on June 30, 1992. James C. Purvis of Halifax County is appointed to the Private Protective Services Board for a term to expire on June 30, 1990. He will replace Bob R. Moye, who has resigned.

Sec. 25. Clarence E. Leatherman of Lincoln County is appointed to the Property Tax Commission for a term to expire on June 30, 1991.

Sec. 26. John David Walker of Robeson County is appointed to the Public Officers and Employees Liability Insurance Commission for a term to expire on June 30, 1991.

Sec. 27. William W. Eskridge of Forsyth County is appointed to the Board of Trustees of the Teachers' and State Employees' Retirement System for a term to expire on June 30, 1991.

Sec. 28. Joy G. Keever of Lincoln County and Harriet S. Hopkins of Durham County are appointed to the North Carolina School of Science and Mathematics Board of Trustees for terms to expire on June 30, 1991.

Sec. 29. Dr. Samuel C. Powell of Alamance County is appointed to the North Carolina Board of Science and Technology for a term to expire on June 30, 1991.

Sec. 30. Oscar Marine of Onslow County is appointed to the North Carolina Seafood Industrial Park Authority for a term to expire on June 30, 1991.

Sec. 31. Paul R. "Jaybird" McCrary of Davidson County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term to begin on September 1, 1989, and to expire on August 31, 1991.

Sec. 32. Dr. Raymond E. Webster of Pitt County and Libba L. Thompson of Lincoln County are appointed to the North Carolina Center for the Advancement of Teaching Board of Trustees for terms to expire on June 30, 1993.

Sec. 33. James William Shelnutt III of Mecklenburg County and Catherine Carstarphen of Mecklenburg County are appointed to the North Carolina Technological Development Authority for terms to expire on June 30, 1991.

Sec. 34. W. I. Morris of Alamance County and Ralph Burroughs of Forsyth County are appointed to the North Carolina Board of Public Telecommunications Commissioners for terms to expire on June 30, 1991.

Sec. 35. Rudy Anderson of Forsyth County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term to expire on June 30, 1991.

Sec. 36. Paul Allen Drechsler of Davie County is appointed to the North Carolina State Board of Therapeutic Recreation Certification for a term to expire on June 30, 1992. This is the public member categorical appointment.

Sec. 37. Dr. Moses A. Ray of Edgecombe County is appointed to the North Carolina Board of Transportation for a term to expire on June 30, 1991.

Sec. 38. Dr. Pressley R. Rankin, Jr. of Richmond County is appointed to the Governor's Waste Management Board for a term to expire on June 30, 1991.

Sec. 39. Ellen Reckhow of Durham County is appointed to the Watershed Protection Advisory Council for a term to expire on June 30, 1991. This is the categorical appointment for a representative of county government. Jane S. Davis of Durham County is appointed to the Watershed Protection Council for a term to expire on June 30,

1991. This is the categorical appointment for a representative of municipal government.

PART II. APPOINTMENTS OF PRESIDENT PRO TEMPORE

Sec. 39.1. Robert G. Winfree of Durham County is appointed to the Information Technology Commission for a term expiring June 30, 1993.

Sec. 39.2. Patsy W. Ezzell of Nash County, JoAnn B. Schoen of Cumberland County, and Catherine T. Hollowell of Wayne County are appointed to the North Carolina Nursing Scholars Commission for terms expiring July 1, 1993.

Sec. 39.3. Betsy Johnson of Wayne County is appointed to the Watershed Protection Advisory Council for a term expiring June 30, 1993. This is the categorical appointment as a representative of county government. Molly Fearing of Dare County is appointed to the Watershed Protection Advisory Council for a term expiring June 30, 1993. This is the categorical appointment as a representative of municipal government.

Sec. 39.4. Raymond Keck of Buncombe County is appointed to the North Carolina Manufactured Housing Board for a term beginning October 1, 1989, and expiring September 30, 1992. This is the categorical appointment for a manufactured home supplier.

PART III. CONFORMING CHANGES

Sec. 40. G. S. 143B-181.9A(d)(3) as enacted by Chapter 457 of the 1989 Session Laws is rewritten to read:

"(3) Three members appointed from the House of Representatives by the Speaker of the House of Representatives;".

Sec. 40.1. G.S. 143B-181.9A(d)(4) as enacted by Chapter 457 of the 1989 Session Laws is rewritten to read:

"(4) Three members appointed from the Senate by the President Pro Tempore of the Senate."

Sec. 41. G. S. 143-4 is amended in the first paragraph by deleting the language "a chairman of the House Appropriations Committee, a chairman of the House Finance Committee, three other" and by inserting in lieu thereof the word "five" and by deleting the last sentence of the first paragraph. G. S. 143-4 is further amended in the eighth paragraph by deleting the first sentence and by deleting the word "other" in the second sentence.

Sec. 41.1. G.S. 53-92 reads as rewritten:

"*§ 53-92. Appointment of Commissioner of Banks; State Banking Commission.*

On or before April 1, 1983, and quadrennially thereafter, the Governor shall appoint a Commissioner of Banks subject to confirmation by the General Assembly ~~in joint session~~ by joint

resolution. The name of the Commissioner of Banks shall be submitted to the General Assembly on or before February 1, of the year in which the term of his office begins. The term of office for the Commissioner of Banks shall be four years. In case of a vacancy in the office of Commissioner of Banks for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the Commissioner of Banks shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

The State Banking Commission, which has heretofore been created, shall consist of the State Treasurer, who shall serve as an ex officio member thereof, 12 members appointed by the Governor, and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint five practical bankers and seven persons selected primarily as representatives of the borrowing public. The person appointed by the General Assembly upon the recommendation of the President of the Senate shall be a practical banker. The person appointed by the General Assembly upon the recommendation of the Speaker of the House shall be a person selected primarily as a representative of the borrowing public. The persons selected primarily as representatives of the borrowing public shall not be employees or directors of any financial institution nor shall they have any interest in any regulated financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any financial institution does not exceed one-half of one percent (1/2 of 1%) of the capital stock of that financial institution. These members of the Commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. No person shall serve on the Commission for more than two complete consecutive terms. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the person appointing them, for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive as compensation for their services the same per diem and

expenses as is paid to the members of the Advisory Budget Commission. This compensation shall be paid from the fees collected from the examination of banks as provided by law.

The Banking Commission shall meet at such time or times, and not less than once every three months, as the Commission shall, by resolution, prescribe, and the Commission may be convened in special session at the call of the Governor, or upon the request of the Commissioner of Banks. The State Treasurer shall be chairman of the said Commission.

No member of said Commission shall act in any matter affecting any bank in which he is financially interested, or with which he is in any manner connected. No member of said Commission shall divulge or make use of any information coming into his possession as a result of his service on such Commission, and shall not give out any information with reference to any facts coming into his possession by reason of his services on such Commission in connection with the condition of any State banking institution, unless such information shall be required of him at any hearing at which he is duly subpoenaed, or when required by order of a court of competent jurisdiction.

A quorum shall consist of a majority of the total membership of the Banking Commission. A majority vote of the members qualified with respect to a matter under review present at that meeting shall constitute valid action of the Banking Commission. The State Treasurer and all disqualified members who are present shall be counted to determine whether a quorum is present at a meeting.

The Commissioner of Banks shall act as the executive officer of the Banking Commission, but the Commission shall provide, by rules and regulations, for hearings before the Commission upon any matter or thing which may arise in connection with the banking laws of this State upon the request of any person interested therein, and review any action taken or done by the Commissioner of Banks.

The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State; any party to a proceeding before the Banking Commission may, within 20 days after final order of said Commission and by written notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for a final determination of any question of law which may be involved. The cause shall be entitled 'State of North Carolina on Relation of the Banking Commission against (here insert name of appellant).' It shall be placed on the civil issue docket of such court and shall have precedence over

other civil actions. In the event of an appeal the Commissioner shall certify the record to the Clerk of Superior Court of Wake County within 15 days thereafter."

Sec. 41.2. G.S. 62-10(a) reads as rewritten:

"(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly ~~in joint session~~ by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section."

Sec. 41.3. G.S. 62-15(a) reads as rewritten:

"(a) There is established in the Commission the office of executive director, whose salary shall be the same as that fixed for members of the Commission. The executive director shall be appointed by the Governor subject to confirmation by the General Assembly ~~in joint session~~ by joint resolution. The name of the executive director appointed by the Governor shall be submitted to the General Assembly on or before May 1 of the year in which the term of his office begins. The term of office for the executive director shall be six years, and the initial term shall begin July 1, 1977. The executive director may be removed from office by the Governor in the event of his incapacity to serve; and the executive director shall be removed from office by the Governor upon the affirmative recommendation of a majority of the Commission, after consultation with the Joint Legislative Utility Review Committee of the General Assembly. In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the executive director shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly."

Sec. 42. Unless otherwise specified, all appointments made by this act are for terms to begin upon ratification.

Sec. 43. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 1668 **CHAPTER 782**

AN ACT TO ALLOW AN ADDITIONAL THIRTY-DAY PERIOD FOR THE SELLER OF A MOTOR VEHICLE TO FILE AN AFFIDAVIT STATING THAT THE SALE WAS EXEMPT FROM SALES TAX AND TO CLARIFY THE LAW ABOLISHING PARENT-CHILD IMMUNITY IN MOTOR VEHICLE CASES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 105-164.13(32), an affidavit concerning the sale of a motor vehicle to a nonresident that is not filed with a retailer's sales and use tax report for the month in which the sale of the motor vehicle is made shall be accepted if it is filed within 30 days after the failure to file the affidavit is discovered. An affidavit filed within this 30-day period is subject to a penalty of twenty-five percent (25%) of the tax applicable to the sales price of the motor vehicle. If the affidavit is submitted to the Secretary of Revenue after the end of this 30-day period, no exemption shall be allowed.

Sec. 2. G.S. 1-539.21 reads as rewritten:

"*§ 1-539.21. Abolition of parent-child immunity in motor vehicle cases.*

The relationship of parent and child shall not bar the right of action by a person or his estate against his parent or child for wrongful death, personal injury, or property damage arising out of operation of a motor vehicle owned or operated by the ~~parent.~~ parent or child."

Sec. 3. This act is effective upon ratification. Section 1 of this act applies to discoveries made on or after that date, but no refund shall be made of sales and use taxes already paid. Section 2 of this act applies to actions arising on or after that date.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 1912 **CHAPTER 783**

AN ACT TO MAKE TECHNICAL CORRECTIONS IN MISCELLANEOUS COURT FEES.

The General Assembly of North Carolina enacts:

Section 1. If Senate Bill 1177, 1989 Session is enacted, then Section 3 of that act is repealed.

Sec. 2. G.S. 7A-308(a)(16) is repealed.

Sec. 3. G.S. 7A-308(a)(19) is repealed.

Sec. 4. G.S. 7A-308(b) reads as rewritten:

"(b) The fees and commissions set forth in this section are not chargeable when the service is performed as a part of the regular disposition of any action or special proceeding or the administration of an estate. When a transaction involves more than one of the services set forth in this section, only the greater service fee shall be charged. The Director of the Administrative Office of the courts shall issue guidelines pursuant to G.S. 7A-343(3) to be followed in administering this subsection."

Sec. 5. Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"*§ 7A-308.1. Fees on Deposits and Investments.*

On all funds received by the clerk by virtue or color of his office and deposited pursuant to G.S. 7A-112.1 or invested pursuant to G.S. 7A-112, one or both of the fees provided for in this section shall be assessed and collected as follows:

(1) On all funds deposited by the clerk in an interest bearing checking account pursuant to G.S. 7A-112.1, a fee of four percent (4%) of each principal amount so deposited shall be assessed and collected, subject to the following conditions:

a. The fee shall be collected from interest earnings only and shall not exceed the amount of the interest earnings on any principal amount so deposited, or seven hundred fifty dollars ($750.00), whichever is less;

b. All fees collected pursuant to this subsection shall be paid to the county as court facilities fees and used as prescribed in G.S. 7A-304(a)(2);

c. All interest earnings in excess of the prescribed fee shall be remitted to the beneficial owner or owners of any principal amount when that amount is withdrawn and distributed by the clerk; and

d. If any principal amount is withdrawn from the checking account and invested pursuant to G.S. 7A-112, any interest in excess of the prescribed clerk's fee which is invested with the principal amount shall be included in the fund upon which the fee provided for in subdivision (2) is computed.

(2) On all funds to be invested by the clerk pursuant to G.S. 7A-112, a fee equal to five percent (5%) of each fund shall be assessed and collected, subject to the following conditions:

a. The fee shall be charged and deducted from each fund before the fund is invested, and only the balance shall be invested;

b. Over the life of an account, the fees charged on the initial funds and all funds subsequently placed with the clerk for that account shall not exceed the investment earnings on the account or one thousand dollars ($1,000), whichever is less;

c. All fees collected pursuant to this subsection shall be remitted to the State Treasurer for the support of the General Court of Justice; and

d. Any fees charged in excess of the cumulative investment earnings on an account shall be refunded and all investment earnings in excess of the prescribed fee shall be remitted to the beneficial owner or owners when all funds in that account are finally withdrawn and distributed by the clerk."

Sec. 6. This act is effective upon ratification, and shall apply to all funds on deposit or invested as of its effective date and to all funds received on or after that date.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 111 **CHAPTER 784**

AN ACT TO IMPROVE THE MANAGEMENT OF SOLID WASTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-290 as amended by Section 11 of Chapter 168 and by Section 5 of Chapter 742 of the 1989 Session Laws reads as rewritten:

"§ *130A-290. Definitions.*

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

(1) 'CERCLA/SARA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

(2) 'Closure' means the cessation of operation of a solid waste management facility and the act of securing the

facility so that it will pose no significant threat to human health or the environment.

~~(2)~~ (3) 'Commercial' when applied to a hazardous waste facility, means a hazardous waste facility that accepts hazardous waste from the general public or from another person for a fee.

(4) 'Construction' or 'demolition' when used in connection with 'waste' or 'debris' means solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.

(5) 'Designated local government' means a unit of local government which holds a permit issued by the Department pursuant to G.S. 130A-291(b) to operate a solid waste management facility.

~~(3)~~ (6) 'Disposal' means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

~~(4)~~ (7) 'Garbage' means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

~~(5)~~ (8) 'Hazardous waste' means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

~~(6)~~ (9) 'Hazardous waste facility' means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

~~(7)~~ (10) 'Hazardous waste generation' means the act or process of producing hazardous waste.

~~(8)~~ (11) 'Hazardous waste disposal facility' means any facility or any portion of a facility for disposal of hazardous

waste on or in land in accordance with rules adopted under this Article.

~~(9)~~ (12) 'Hazardous waste management' means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

~~(10)~~ (13) 'Hazardous waste management program' means the program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management.

(14) 'Inert debris' means solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.

(15) 'Land-clearing debris' means solid waste which is generated solely from land-clearing activities.

~~(11)~~ (16) 'Landfill' means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

~~(12)~~ (17) 'Manifest' means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

~~(12a)~~(18) 'Medical waste' means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of 'solid waste' in this section.

~~(13)~~ (19) 'Natural resources' means all materials which have useful physical or chemical properties which exist, unused, in nature.

~~(14)~~ (20) 'Open dump' means a solid waste disposal site which is not a sanitary landfill.

(21) 'Operator' means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of

a solid waste management facility and includes the person in charge of a shift or periods of operation during any part of the day.

~~(15)~~ (22) 'Person' means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(23) 'Processing' means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.

(24) 'Recovered materials' means those materials which have known recycling potential, can be feasibly recycled, and have been diverted or removed from the solid waste stream for sale, use, or reuse by separation, collection, or processing.

~~(16)~~ (25) 'RCRA' means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.

(26) 'Recyclable material' means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

~~(17)~~ (27) 'Recycling' means ~~the~~ any process by which ~~recovered resources are transformed into new products so that the original products lose their identity~~ solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

~~(18)~~ (28) 'Refuse' means all nonputrescible waste.

~~(19)~~ (29) 'Resource recovery' means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.

~~(20)~~ (30) 'Reuse' means a process by which resources are reused or rendered usable.

~~(21)~~ (31) 'Sanitary landfill' means a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this Article.

~~(22)~~ (32) 'Septage' means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids

and sludge of human or domestic origin which is removed from a septic tank system.

~~(23)~~ (33) 'Septage management firm' means a person engaged in the business of pumping, transporting, storing, treating or disposing septage. The term does not include public or community sanitary sewage systems that treat or dispose septage.

~~(24)~~ (34) 'Sludge' means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility, or any other waste having similar characteristics and effects.

~~(25)~~ (35) 'Solid waste' means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

a. Fecal waste from fowls and animals other than humans;
b. Solid or dissolved material in:
    1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters;
    2. Irrigation return flows; and
    3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet

the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;

c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article;

d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).

e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

~~(26)~~ (36) 'Solid waste disposal site' means any place at which solid wastes are disposed of by incineration, sanitary landfill or any other method.

~~(27)~~ (37) 'Solid waste generation' means the act or process of producing solid waste.

~~(28)~~ (38) 'Solid waste management' means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.

~~(29)~~ (39) 'Solid waste management facility' means land, personnel and equipment used in the management of solid waste.

(40) 'Special wastes' means solid wastes that can require special handling and management, including white goods, whole tires, used oil, lead-acid batteries, and medical wastes.

~~(30)~~ (41) 'Storage' means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

~~(31)~~ (42) 'Treatment' means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to

neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. 'Treatment' includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

~~(32)~~ (43) 'Unit of local government' means a county, city, town or incorporated village.

(44) 'White goods' includes inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.

(45) 'Yard trash' means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

(b) Unless a different meaning is required by the context, the following definitions shall apply throughout G.S. 130A-309.15 through G.S. 130A-309.17:

(1) 'Public used oil collection center' means:

a. Automotive service facilities or governmentally sponsored collection facilities, which in the course of business accept for disposal small quantities of used oil from households; and

b. Facilities which store used oil in aboveground tanks, which are approved by the Department, and which in the course of business accept for disposal small quantities of used oil from households.

(2) 'Reclaiming' means the use of methods, other than those used in rerefining, to purify used oil primarily to remove insoluble contaminants, making the oil suitable for further use; the methods may include settling, heating, dehydration, filtration, or centrifuging.

(3) 'Recycling' means to prepare used oil for reuse as a petroleum product by rerefining, reclaiming, reprocessing, or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil.

(4) 'Rerefining' means the use of refining processes on used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefining may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(5) 'Used oil' means any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and is economically recyclable.

(6) 'Used oil recycling facility' means any facility that recycles more than 10,000 gallons of used oil annually."

Sec. 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2A. Nonhazardous Solid Waste Management.

"*§ 130A-309.01. Title.*

This Part may be cited as the Solid Waste Management Act of 1989.

"*§ 130A-309.02. Applicability.*

This Part shall apply to solid waste other than hazardous waste and sludges.

"*§ 130A-309.03. Findings, purposes.*

(a) The General Assembly finds that:

(1) Inefficient and improper methods of managing solid waste create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances.

(2) Problems of solid waste management have become a matter statewide in scope and necessitate State action to assist local governments in improving methods and processes to promote more efficient methods of solid waste collection and disposal.

(3) The continuing technological progress and improvements in methods of manufacture, packaging, and marketing of consumer products have resulted in an ever-mounting increase of the mass of material discarded by the purchasers of the products, thereby necessitating a statewide approach to assisting local governments around the State with their solid waste management programs.

(4) The economic growth and population growth of our State have required increased industrial production together with related commercial and agricultural operations to meet our needs, which have resulted in a rising tide of unwanted and discarded materials.

(5) The failure or inability to economically recover material and energy resources from solid waste results in the unnecessary waste and depletion of our natural resources;

such that, maximum resource recovery from solid waste and maximum recycling and reuse of the resources must be considered goals of the State.

(6) Certain solid waste, due to its quantity; concentration; or physical, chemical, biological, or infectious characteristics; is exceptionally hazardous to human health, safety, and to the environment; such that exceptional attention to the transportation, disposal, storage, and treatment of the waste is necessary to protect human health, safety, and welfare; and to protect the environment.

(7) This Part should be integrated with other State laws and rules and applicable federal law.

(b) It is the purpose of this Part to:

(1) Regulate in the most economically feasible, cost-effective, and environmentally safe manner the storage, collection, transport, separation, processing, recycling, and disposal of solid waste in order to protect the public health, safety, and welfare; enhance the environment for the people of this State; and recover resources which have the potential for further usefulness.

(2) Establish and maintain a cooperative State program of planning, technical assistance, and financial assistance for solid waste management.

(3) Require counties and municipalities to adequately plan and provide efficient, environmentally acceptable solid waste management programs; and require counties to plan for proper hazardous waste management.

(4) Require review of the design, and issue permits for the construction, operation, and closure of solid waste management facilities.

(5) Promote the application of resource recovery systems that preserve and enhance the quality of air, water, and land resources.

(6) Ensure that exceptionally hazardous solid waste is transported, disposed of, stored, and treated in a manner adequate to protect human health, safety, and welfare; and the environment.

(7) Promote the reduction, recycling, reuse, or treatment of solid waste, specifically including hazardous waste, in lieu of disposal of the waste.

(8) Promote methods and technology for the treatment, disposal, and transportation of hazardous waste which are practical, cost-effective, and economically feasible.

(9) Encourage counties and municipalities to utilize all means reasonably available to promote efficient and proper methods of managing solid waste and to promote the economical recovery of material and energy resources from solid waste, including contracting with persons to provide or operate resource recovery services or facilities on behalf of the county or municipality.

(10) Promote the education of the general public and the training of solid waste professionals to reduce the production of solid waste, to ensure proper disposal of solid waste, and to encourage recycling.

(11) Encourage the development of waste reduction and recycling as a means of managing solid waste, conserving resources, and supplying energy through planning, grants, technical assistance, and other incentives.

(12) Encourage the development of the State's recycling industry by promoting the successful development of markets for recycled items and by promoting the acceleration and advancement of the technology used in manufacturing processes that use recycled items.

(13) Give the State a leadership role in recycling efforts by granting a preference in State purchasing to products with recycled content.

(14) Require counties to develop and implement recycling programs so that valuable materials may be returned to productive use, energy and natural resources conserved, and the useful life of solid waste management facilities extended.

(15) Ensure that medical waste is transported, stored, treated, and disposed of in a manner sufficient to protect human health, safety, and welfare; and the environment.

(16) Require counties, municipalities, and State agencies to determine the full cost of providing storage, collection, transport, separation, processing, recycling, and disposal of solid waste in an environmentally safe manner; and encourage counties, municipalities, and State agencies to contract with private persons for any or all the services in order to assure that the services are provided in the most cost-effective manner.

"§ *130A-309.04. State solid waste management policy and goals.*

(a) It is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills and to assist units of local government with solid waste management. In

furtherance of this State policy, there is established a hierarchy of methods of managing solid waste, in descending order of preference:

(1) Waste volume reduction at the source;
(2) Recycling and reuse;
(3) Composting;
(4) Incineration with energy production;
(5) Incineration for volume reduction;
(6) Disposal in landfills.

(b) It is the policy of the State to encourage research into innovative solid waste management methods and products and to encourage regional solid waste management projects.

(c) It is the goal of this State that at least twenty-five percent (25%) of the total waste stream be recycled by 1 January 1993.

(d) In furtherance of the State's solid waste management policy, each State agency shall develop a solid waste management plan for any waste which it generates which is consistent with the solid waste management policy of the State.

(e) Each county, either individually or in cooperation with others, shall, in cooperation with its municipalities, develop a comprehensive county solid waste management plan and submit the plan to the Department for approval. County solid waste management plans shall be updated and submitted for approval at least once every two years. A county solid waste management plan shall be consistent with the State's comprehensive solid waste plan. In counties where a municipality operates the major solid waste disposal facility, the comprehensive solid waste plan may be prepared by the municipality, with the approval of the county and in cooperation with the other municipalities. Each county's comprehensive solid waste management plan shall include provisions which address the State's recycling goal. Each county's plan shall take into consideration facilities and other resources for management of solid waste which may be available through private enterprise. This section shall be construed to encourage the involvement and participation of private enterprise in solid waste management. The Department shall develop a form designed to elicit pertinent information regarding a county's solid waste management plan. The Department shall provide assistance in the preparation of county plans upon request.

"§ *130A-309.05. Regulated wastes; certain exclusions.*

(a) Notwithstanding other provisions of this Article, the following waste shall be regulated pursuant to this Part:

(1) Medical waste; and
(2) Ash generated by a solid waste management facility from the burning of solid waste.

(b) Ash generated by a solid waste management facility from the burning of solid waste shall be disposed of in a properly designed solid waste disposal area that complies with standards developed by the Department for the disposal of the ash. The Department shall work with solid waste management facilities which burn solid waste to identify and develop methods for recycling and reusing incinerator ash or treated ash.

(c) Recovered materials are not subject to the provisions of this Part if:

(1) A majority of the recovered materials at a facility are sold, used, or reused within one year;

(2) The recovered materials or the products or by-products of operations that process recovered materials are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water so that the products or by-products or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters including groundwaters, or otherwise enter the environment or pose a threat to public health and safety; and

(3) The recovered materials are not hazardous waste and have not been recovered from solid waste which is defined as hazardous waste under G.S. 130A-290.

"*§ 130A-309.06. Additional powers and duties of the Department.*

(a) In addition to other powers and duties set forth in this Part, the Department shall:

(1) Develop a comprehensive solid waste management plan consistent with this Part by 1 March 1991. The plan shall be developed in consultation with units of local government and shall be updated at least every three years. In developing the State solid waste management plan, the Department shall hold public hearings around the State and shall give notice of these public hearings to all units of local government and regional planning agencies.

(2) Provide guidance for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the State.

(3) Encourage coordinated local activity for solid waste management within a common geographical area.

(4) Provide planning, technical, and financial assistance to units of local government and State agencies for reduction, recycling, reuse, and processing of solid waste and for safe and environmentally sound solid waste management and disposal.

(5) Cooperate with appropriate federal agencies and private organizations in carrying out the provisions of this Part.

(6) Promote and assist the development of solid waste reduction, recycling, and resource recovery programs which preserve and enhance the quality of the air, water, and other natural resources of the State.

(7) Maintain a directory of recycling and resource recovery systems in the State and provide assistance with matching recovered materials with markets.

(8) Manage a program of grants for programs for recycling and special waste management, and for programs which provide for the safe and proper management of solid waste.

(9) Provide for the education of the general public and the training of solid waste management professionals to reduce the production of solid waste, to ensure proper processing and disposal of solid waste, and to encourage recycling and solid waste reduction.

(10) Develop descriptive literature to inform units of local government of their solid waste management responsibilities and opportunities.

(11) Conduct at least one workshop each year in each region served by a council of governments.

(b) The Department may refuse to issue a permit to an applicant who by past conduct in this State has repeatedly violated related statutes, rules, orders, or permit terms or conditions relating to any solid waste management facility and who is deemed by the Department to be responsible for the violations. For the purpose of this subdivision, an applicant includes the owner or operator of the facility, or, if the owner or operator is a business entity, the parent of the subsidiary corporation, a partner, a corporate officer or director, or a stockholder holding more than fifty percent (50%) of the stock of the corporation.

(c) The Department shall prepare by 1 March 1991, and every year thereafter, a report on the status of solid waste management efforts in the State. The scope of the report shall be determined by the resources available to the Department for its preparation and, to the extent possible, shall include:

(1) A comprehensive analysis, to be updated in each report, of solid waste generation and disposal in the State projected for the 20-year period beginning on 1 July 1991.

(2) The total amounts of solid waste generated, recycled, and disposed of and the methods of solid waste recycling and disposal used during the calendar year prior to the year in which the report is published.

(3) An evaluation of the development and implementation of local solid waste management programs and county and municipal recycling programs.

(4) An evaluation of the success of each county or group of counties in meeting the municipal solid waste reduction goal established in G.S. 130A-309.09(d).

(5) Recommendations concerning existing and potential programs for solid waste reduction and recycling that would be appropriate for units of local government and State agencies to implement to meet the requirements of this Part.

(6) An evaluation of the markets for recycled materials and the success of State, local, and private industry efforts to enhance the markets for such materials.

(7) Recommendations to the Governor and the General Assembly to improve the management and recycling of solid waste in the State.

"*§ 130A-309.07. State solid waste management plan.*

The State solid waste management plan shall include, at a minimum:

(1) Procedures and requirements to ensure cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate, including the establishment of joint agencies pursuant to G.S. 160A-462.

(2) Provisions for the continuation of existing effective regional resource recovery, recycling, and solid waste management facilities and programs.

(3) Planning guidance and technical assistance to counties and municipalities to aid in meeting the municipal solid waste reduction goals established in G.S. 130A-309.09(d).

(4) Planning guidance and technical assistance to counties and municipalities to assist the development and implementation of recycling programs.

(5) Technical assistance to counties and municipalities in determining the full cost for solid waste management as required in G.S. 130A-309.08.

(6) Planning guidance and technical assistance to counties and municipalities to assist the development and implementation of programs for alternative disposal, processing, or recycling of the solid wastes prohibited from disposal in landfills pursuant to G.S 130A-309.10 and for special wastes.

(7) A public education program, to be developed in cooperation with the Department of Public Instruction, units of local government, other State agencies, and business and industry organizations, to inform the public of the need for and the benefits of recycling solid waste and reducing the amounts of solid and hazardous waste generated and disposed of in the State. The public education program shall be implemented through public workshops and through the use of brochures, reports, public service announcements, and other materials.

"*§ 130A-309.08. Determination of cost for solid waste management; local solid waste management fees.*

(a) Within one year of the effective date of this section or within one year after rules are adopted by the Commission, whichever occurs later, each county and each municipality shall determine the full cost for solid waste management within the service area of the county or municipality for a one-year period as specified by rules adopted by the Commission, and shall update the full cost determination every year thereafter. The Commission shall establish by rule the method for units of local government to use in calculating full cost. Rule making shall be initiated and at least one public hearing shall be held by 1 March 1990. In developing the rule, the Commission shall examine the feasibility of the use of an enterprise fund process by units of local government in operating their solid waste management systems.

(b) Within one year after the completion of the cost determination required by subsection (a) of this section, each municipality shall establish a system to inform, no less than once a year, residential and nonresidential users of solid waste management services within the municipality's service area of the user's share, on an average or individual basis, of the full cost for solid waste management as determined pursuant to subsection (a) of this section. Counties shall provide the information required of municipalities only to residential and nonresidential users of solid waste management services within the county's service area that are not served by a municipality. Municipalities shall include costs charges to them or persons contracting with them for disposal of solid waste in the full cost information provided to residential and nonresidential users of solid waste management services. Counties and municipalities are encouraged to operate their solid waste management systems through use of an enterprise fund.

(c) For purposes of this section, 'service area' means the area in which the county or municipality provides, directly or by contract, solid waste management services. The provisions of this section shall not be construed to require a person operating under a franchise

contract or other agreement to collect or dispose of solid waste within the service area of a county or municipality to make the calculations or to establish a system to provide the information required under this section, unless such person agrees to do so as part of such franchise contract or other agreement.

(d) In order to assist in achieving the municipal solid waste reduction goal and the recycling provisions of G.S. 130A-309.09 a county or a municipality which owns or operates a solid waste management facility may charge solid waste disposal fees which may vary based on a number of factors, including the amount, characteristics, and form of recyclable materials present in the solid waste that is brought to the county's or the municipality's facility for processing or disposal.

(e) In addition to all other fees required or allowed by law, a county or a municipality, at the discretion of its governing board, may impose a fee for the services the county or municipality provides with regard to the collection, processing, or disposal of solid waste, to be used for developing and implementing a recycling program.

(f) This section does not prohibit a county, municipality, or other person from providing grants, loans, or other aid to low-income persons to pay part or all of the costs of such persons' solid waste management services.

"*§ 130A-309.09. Local government solid waste responsibilities.*

(a) The governing board of a designated local government shall provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas designated to be served by the facility. Pursuant to this section and notwithstanding any other provision of this Chapter, designated local governments may adopt ordinances governing the disposal in facilities which they operate of solid waste generated outside of the area designated to be served by such facility. Such ordinances shall not be construed to apply to privately operated disposal facilities located within the boundaries of a designated local government. In accordance with this section, municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by the municipality or county, any other municipality or county, or by any other person. Counties and municipalities may charge reasonable fees for the handling and disposal of solid waste at their facilities. The fees charged to municipalities without facilities at a solid waste management facility specified by the county shall not be greater than the fees charged to other users of the facility except as provided in G.S. 130A-309.08(d). Solid waste management fees collected on a countywide basis shall be used to fund solid waste management services provided throughout the county.

(b) Each designated local government shall initiate a recyclable materials recycling program by 1 July 1991. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. The following requirements shall apply:

(1) Construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site.

(2) At a minimum, a majority of marketable materials identified pursuant to G.S. 130A-309.14(b) must be separated from the solid waste stream prior to final disposal at a solid waste disposal facility and must be offered for recycling if the separation and collection of these materials is economically feasible and markets for such materials exist in such proximity as to make transportation of such materials to such markets economically feasible.

(3) Units of local government are encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.

(c) Each designated local government shall ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through joint agencies established pursuant to G.S. 160A-462 or other means provided by law. Nothing in a county's solid waste management or recycling program shall affect the authority of a municipality to franchise or otherwise provide for the collection of solid waste generated within the boundaries of the municipality.

(d) A designated local government's solid waste management and recycling program shall be designed to provide for sufficient reduction of the amount of solid waste generated within the county and the municipalities within its boundaries in order to meet goals for the reduction of municipal solid waste prior to the final disposal or incineration of the waste at a solid waste disposal facility. The goals shall provide, at a minimum, that the amount of municipal solid waste that would be disposed of in the absence of municipal solid waste recycling efforts undertaken within the county and the municipalities within its boundaries is reduced by at least twenty-five percent (25%) of the total waste stream by 1 January 1993. In determining whether the municipal solid waste reduction goal established by this subsection has been achieved, no more than one-half of the goal may be met with

yard trash, white goods, construction and demolition debris, and tires that are removed from the total amount of municipal solid waste that would be disposed of in the absence of municipal solid waste recycling efforts.

(e) As used in this section, 'municipal solid waste' includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash, but does not include solid waste from industrial, mining, or agricultural operations.

(f) The Department may reduce or modify the municipal solid waste reduction goal that a designated local government is required to attempt to achieve pursuant to subsection (d) of this section if the designated local government demonstrates to the Department that:

(1) The achievement of the goal set forth in subsection (d) would have an adverse effect on the financial obligations of a designated local government incurred prior to the effective date of this section that are directly related to a waste-to-energy facility owned or operated by or on behalf of the designated local government; and

(2) The designated local government cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility. The goal shall not be waived entirely and may only be reduced or modified to the extent necessary to alleviate the adverse effects of achieving the goal on the financial viability of a designated local government's waste-to-energy facility. Nothing in this subsection shall exempt a designated local government from developing and implementing a recycling program pursuant to this Part.

(g) In order to assess the progress in meeting the goal established in subsection (d) of this section, each designated local government shall, by 1 October 1990, and each year thereafter, report to the Department its annual solid waste management program and recycling activities. The report by the designated local government must include:

(1) A description of its public education program on recycling;

(2) The amount of solid waste disposed of at solid waste disposal facilities, by type of waste such as yard trash, white goods, clean debris, tires, and unseparated solid waste;

(3) The amount and type of materials from the solid waste stream that were recycled;

(4) The percentage of the population participating in various types of recycling activities instituted;

(5) The percent reduction each year in municipal solid waste disposed of at solid waste disposal facilities;

(6) A description of the recycling activities attempted, their success rates, the perceived reasons for failure or success, and the recycling activities which are ongoing and most successful; and

(7) In its first report, a description of any recycling activities implemented prior to 1 July 1991.

(h) A county or municipality may enter into a written agreement with other persons, including persons transporting solid waste, to undertake to fulfill some or all of the county's or municipality's responsibilities under this section.

(i) In the development and implementation of a curbside recyclable materials collection program, a county or municipality shall enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and the franchisee fail to reach an agreement within 60 days from the initiation of negotiations, the county or municipality may solicit proposals from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposals, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of any franchise agreement for the collection of solid waste within a service area of the county or municipality.

(j) In developing and implementing recycling programs, counties and municipalities shall give consideration to the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling on either a for-profit or nonprofit basis. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their responsibilities under this Part.

(k) A county or county and the municipalities within the county's or counties' boundaries may jointly develop a recycling program, provided that the county and each municipality must enter into a

written agreement to jointly develop a recycling program. If a municipality does not participate in jointly developing a recycling program with the county within which it is located, the county may require the municipality to provide information on recycling efforts undertaken within the boundaries of the municipality in order to determine whether the goals for municipal solid waste reduction are being achieved.

(l) It is the policy of the State that a county or counties and its or their municipalities may jointly determine, through a joint agency established pursuant to G.S. 160A-462 or by requesting the passage of special legislation, which local governmental agency shall administer a solid waste management or recycling program.

(m) The designated local government shall provide written notice to all units of local government within the designated local government when recycling program development begins and shall provide periodic written progress reports to the units of local government concerning the preparation of the recycling program.

(n) Nothing in this section shall be construed to prevent the governing board of any county or municipality from providing by ordinance or regulation for solid waste management standards which are stricter or more extensive than those imposed by the State solid waste management program and rules and orders issued to implement the State program.

(o) Nothing in this Part or in any rule adopted by any agency shall be construed to require any county or municipality to participate in any regional solid waste management until the governing board of the county or municipality has determined that participation in such a program is economically feasible for that county or municipality. Nothing in this Part or in any special or local act or in any rule adopted by any agency shall be construed to limit the authority of a municipality to regulate the disposal of solid waste located within its boundaries or generated within its boundaries so long as a facility for any such disposal has been approved by the Department, unless the municipality is included within a solid waste management program created under a joint agency or special or local act. If bonds had been issued to finance a solid waste management program in reliance on State law granting to a designated local government the responsibility for the solid waste management program, nothing herein shall permit any governmental agency to withdraw from the program if the agency's participation is necessary for the financial feasibility of the project, so long as the bonds are outstanding.

(p) Nothing in this Part or in any rule adopted by any State agency pursuant to this Part shall require any person to subscribe to any private solid waste collection service.

(q) To effect the purposes of this Part, counties and municipalities are authorized, in addition to other powers granted pursuant to this Part:

(1) To contract with persons to provide resource recovery services or operate resource recovery facilities on behalf of the county or municipality.

(2) To indemnify persons providing resource recovery services or operating resource recovery facilities for liabilities or claims arising out of the provision or operation of such services or facilities that are not the result of the sole negligence of the persons providing the services or operating the facilities.

(3) To contract with persons to provide solid waste disposal services or operate solid waste disposal facilities on behalf of the county or municipality.

(r) On and after 1 July 1991, each operator of a solid waste management facility owned or operated by or on behalf of a county or municipality, except existing facilities which will not be in use one year after the effective date of this section, shall weigh all solid waste when it is received.

(s) In the event the power to manage solid waste has been granted to a special district or other entity by special act or joint agency, any duty or responsibility or penalty imposed under this Part on a county or municipality shall apply to such special district or other entity to the extent of the grant of the duty or responsibility or imposition of such penalty. To the same extent, such special district or other entity shall be eligible for grants or other benefits provided pursuant to this Part.

(t) In addition to any other penalties provided by law, a unit of local government that does not comply with the requirements of subsections (b) and (d) shall not be eligible for grants from the Solid Waste Management Trust Fund, and the Department may notify the State Treasurer to withhold payment of all or a portion of funds payable to the unit of local government by the Department from the General Fund or by the Department from any other State fund, to the extent not pledged to retire bonded indebtedness, unless the unit of local government demonstrates that good faith efforts to meet the requirements of subsections (b) and (d) have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries.

"§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain special wastes in landfills prohibited.

(a) After 1 January 1990, no beverage shall be sold or offered for sale within the State in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

(b) After 1 October 1991, no person shall distribute, sell, or offer for sale in this State, any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons (CFC). Producers of containers or packing material manufactured with chlorofluorocarbons (CFC) are urged to introduce alternative packaging materials which are environmentally compatible.

(c) (1) After 1 January 1991, no plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the bag is composed of material which is recyclable. Notice of recyclability shall be printed on each bag.

(2) After 1 January 1993, no plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the Secretary certifies that not less than twenty-five percent (25%) of such bags are being recycled.

(d) (1) After 1 October 1991, no person shall distribute, sell, or offer for sale in this State any polystyrene foam product which is to be used in conjunction with food for human consumption unless such product is composed of material which is recyclable.

(2) After 1 October 1993, no person shall distribute, sell, or offer for sale in this State any polystyrene foam product which is to be used in conjunction with food for human consumption unless the Secretary certifies that not less than twenty-five percent (25%) of such products are being recycled.

(e) After 1 July 1991, no person shall distribute, sell, or offer for sale in this State any plastic container product unless the product has a molded label indicating the plastic resin used to produce the plastic container product. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangulated arrows. The three arrows shall form an equilateral triangle with the common point of each line forming each angle of the triangle at the midpoint of each arrow and rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The label shall appear on the bottom of the plastic container product

and be clearly visible. Plastic beverage containers having a capacity of less than 16 fluid ounces, nonsolid food liquid containers having a capacity of less than 16 fluid ounces, and rigid plastic containers having a capacity of less than eight fluid ounces are exempt from the requirements of this subsection. The numbers and letters shall be as follows:

(1) For polyethylene terephthalate, the letters 'PETE' and the number 1.

(2) For high density polyethylene, the letters 'HDPE' and the number 2.

(3) For vinyl, the letter 'V' and the number 3.

(4) For low density polyethylene, the letters 'LDPE' and the number 4.

(5) For polypropylene, the letters 'PP' and the number 5.

(6) For polystyrene, the letters 'PS' and the number 6.

(7) For any other, including multi-material containers, the letters 'OTHER' and the number 7.

(f) In accordance with the following schedule, no person shall knowingly dispose of the following special wastes in landfills:

(1) Lead-acid batteries, after 1 January 1991. Lead-acid batteries also shall not be disposed of in any waste-to-energy facility after 1 January 1991. To encourage proper collection and recycling, all persons who sell lead-acid batteries at retail shall accept used lead-acid batteries as trade-ins for new lead-acid batteries.

(2) Used oil, after 1 October 1990.

(3) Yard trash, after 1 January 1993, except in landfills classified for such use under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.

(4) White goods, after 1 January 1991.

(g) Prior to the effective dates specified in this section, the Department shall identify and assist in developing alternative disposal, processing, or recycling options for the solid waste identified in this section.

"*§ 130A-309.11. Compost standards and applications.*

(a) In order to protect the State's land and water resources, compost produced, utilized, or disposed of by the composting process at solid waste management facilities in the State must meet criteria established by the Department.

(b) Within six months after the effective date of this section, the Department shall initiate rule making to establish standards for the production of compost. Rules shall be adopted not later than 24 months after the initiation of rule making. Such rules shall include:

(1) Requirements necessary to produce hygienically safe compost products for varying applications.

(2) A classification scheme for compost based on:

a. The types of waste composted, including at least one type containing only yard trash;

b. The maturity of the compost, including at least three degrees of decomposition for fresh, semi-mature, and mature; and

c. The levels of organic and inorganic constituents in the compost.

(c) The compost classification scheme shall address:

(1) Methods for measurement of the compost maturity.

(2) Particle sizes.

(3) Moisture content.

(4) Average levels of organic and inorganic constituents, including heavy metals, for such classes of compost as the Department establishes, and the analytical methods to determine those levels.

(d) Within six months after the effective date of this section, the Department shall initiate rule making to prescribe the allowable uses and application rates of compost. Rules shall be adopted not later than 24 months after the initiation of rule making. Such rules shall be based on the following criteria:

(1) The total quantity of organic and inorganic constituents, including heavy metals, allowed to be applied through the addition of compost to the soil per acre per year.

(2) The allowable uses of compost based on maturity and type of compost.

(e) If compost is produced which does not meet the criteria prescribed by the Department for agricultural and other use, the compost must be reprocessed or disposed of in a manner approved by the Department, unless a different application is specifically permitted by the Department.

"*§ 130A-309.12. Solid Waste Management Trust Fund.*

(a) The Solid Waste Management Trust Fund is created and is to be administered by the Department for the purposes of:

(1) Funding activities of the Department to promote waste reduction and recycling including but not limited to public education programs and technical assistance to units of local government;

(2) Funding research on the solid waste stream in North Carolina;

(3) Funding activities related to the development of secondary materials markets;

(4) Providing funding for demonstration projects as provided by this Part; and

(5) Providing funding for research by The University of North Carolina and independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools as provided by this Part.

(b) The Solid Waste Management Trust Fund shall consist of:

(1) Funds appropriated by the General Assembly;

(2) Contributions and grants from public or private sources; and

(3) Ten percent (10%) of the proceeds of the scrap tire disposal fee imposed pursuant to G.S. 130A-309.55 and G.S. 130A-309.56.

(c) The Department shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Environmental Review Commission as to the condition of the Solid Waste Management Trust Fund and as to the use of all funds allocated from the Solid Waste Management Trust Fund. Quarterly reports required under this subsection shall be made not later than 60 days after the last day of each calendar quarter beginning with the quarter ending 31 December 1989.

"§ 130A-309.13. [Reserved.]

"§ 130A-309.14. Duties of State agencies.

(a) It shall be the duty of each State agency, the General Assembly, the General Court of Justice, and The University of North Carolina, by 1 January 1992, to:

(1) Establish a program in cooperation with the Department and the Department of Administration, for the collection of all recyclable aluminum and wastepaper materials generated in State offices throughout the State, including, at a minimum, high-grade office paper and corrugated paper.

(2) Provide procedures for collecting and storing recyclable materials, containers for storing materials, and contractual or other arrangements with buyers of the recyclable materials.

(3) Evaluate the amount of recyclable wastepaper material recycled and make all necessary modifications to the recycling program to ensure that all recyclable

wastepaper materials are effectively and practically recycled.

(4) Establish and implement, in cooperation with the Department and the Department of Administration, a solid waste reduction program for materials used in the course of agency operations. The program shall be designed and implemented to achieve maximum feasible reduction of solid waste generated as a result of agency operations.

(b) The Department of Economic and Community Development shall assist and encourage the recycling industry in the State. Assistance and encouragement of the recycling industry shall include:

(1) Identifying and analyzing, in cooperation with the Department, components of the State's recycling industry and present and potential markets for recyclable materials in this State, other states, and foreign countries;

(2) Providing information on the availability and benefits of using recycled materials to businesses and industries in the State; and

(3) Distributing any material prepared in implementing this section to the public, businesses, industries, units of local government, or other organizations upon request.

(c) By 1 March 1991, and every other year thereafter, the Department of Economic and Community Development shall prepare a report assessing the recycling industry and recyclable materials markets in the State.

(d) The Department of Economic and Community Development shall investigate the potential markets for composted materials and shall submit its findings to the Department for the waste registry informational program administered by the Department in order to stimulate absorption of available composted materials into such markets.

(e) On or before 1 March 1991, the Department of Economic and Community Development shall report to the General Assembly its findings relative to:

(1) Potential markets for composted materials, including private and public sector markets;

(2) The types of materials which may legally and effectively be used in a successful composting operation; and

(3) The manner in which the composted materials should be marketed for optimum use.

(f) All State agencies, including the Department of Transportation, and the Department of Administration, and units of local government, are required to procure compost products when they can be substituted

for, and cost no more than, regular soil amendment products, provided the compost products meet all applicable State standards, specifications, and rules. This product preference shall apply to, but not be limited to, the construction of highway projects, road rights-of-way, highway planting projects, recultivation and erosion control programs, and other projects.

(g) The Department of Public Instruction, with the assistance of the Department and The University of North Carolina, shall develop, distribute, and encourage the use of guidelines for the collection of recyclable materials and for solid waste reduction in the State system of education. At a minimum, the guidelines shall address solid waste generated in administrative offices, classrooms, dormitories, and cafeterias. The guidelines shall be developed by 1 January 1991.

(h) In order to orient students and their families to the recycling of waste and to encourage the participation of schools, communities, and families in recycling programs, the school board of each school district in the State shall make available an awareness program in the recycling of waste materials. The program shall be provided at both the elementary and secondary levels of education.

(i) The Department of Public Instruction is directed to develop, from funds appropriated for environmental education, curriculum materials and resource guides for a recycling awareness program for instruction at the elementary, middle, and high school levels.

"*§ 130A-309.15. Prohibited acts regarding used oil.*

(a) No person may knowingly:

(1) Collect, transport, store, recycle, use, or dispose of used oil in any manner which endangers the public health or welfare.

(2) Discharge used oil into sewers, drainage systems, septic tanks, surface waters, groundwaters, watercourses, or marine waters.

(3) Dispose of used oil in landfills in the State unless such disposal has been approved by the Department.

(4) Mix used oil with solid waste that is to be disposed of in landfills.

(5) Mix used oil with hazardous substances that make it unsuitable for recycling or beneficial use.

(b) A person who violates subsection (a) of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S. 14-3.

(c) A person who disposes of used oil in a landfill where such used oil has been mixed with other solid waste which may be lawfully disposed of in such landfill, and who is without knowledge that such

solid waste has been mixed with used oil, is not guilty of a violation under this section.

(d) Used oil shall not be used for road oiling, dust control, weed abatement, or other similar purposes that have the potential to release used oil into the environment.

"*§ 130A-309.16. Public education program regarding used oil collection and recycling.*

The Department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil and shall:

(1) Encourage persons who annually sell at retail, in containers for use off the premises, more than 500 gallons of oil to provide the purchasers with information on the locations of collection facilities and information on proper disposal practices.

(2) Establish, maintain, and publicize a used oil information center that disperses materials or information explaining local, State, and federal laws and rules governing used oil and informing the public of places and methods for proper disposal of used oil.

(3) Encourage the voluntary establishment of used oil collection and recycling programs and provide technical assistance to persons who organize such programs.

(4) Encourage the procurement of recycled automotive, industrial, and fuel oils and oils blended with recycled oils for all State and local government uses. Recycled oils procured under this section shall meet equipment manufacturer's specifications.

"*§ 130A-309.17. Registration of persons transporting, collecting, or recycling used oil; fees; reports and records.*

(a) The following persons shall register annually with the Department pursuant to rules of the Department on forms prescribed by it:

(1) Any person who transports over public highways more than 500 gallons of used oil per week.

(2) Any person who maintains a collection facility that receives more than 6,000 gallons of used oil annually. For purposes of registration, the amount received does not include used oil delivered to collection centers by individuals that change their own personal motor oil.

(3) Any facility that recycles more than 10,000 gallons of used oil annually.

(b) An electric utility which generates during its operation used oil that is then reclaimed, recycled, or rerefined by the electric utility for

use in its operations is not required to register or report pursuant to this section.

(c) An on-site burner which only burns a specification used oil generated by the burner is not required to register or report pursuant to this section, provided that the burning is done in compliance with any air permits issued by the Department.

(d) The Department may prescribe a fee for the registration required by this section in an amount which is sufficient to cover the cost of processing applications but which does not exceed twenty-five dollars ($25.00).

(e) The Department shall require each registered person to submit, no later than 1 July of each year, a report which specifies the type and quantity of used oil transported, collected, and recycled during the preceding calendar year.

(f) Each registered person who transports or recycles used oil shall maintain records which identify:

(1) The source of the materials transported or recycled;
(2) The quantity of materials received;
(3) The date of receipt; and
(4) The destination or end use of the materials.

(g) The Department shall perform technical studies to sample used oil at facilities of representative used oil transporters and at representative recycling facilities to determine the incidence of contamination of used oil with hazardous, toxic, or other harmful substances.

(h) Any person who fails to register with the Department as required by this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S. 14-3.

(i) The proceeds from the registration fees imposed by this section shall be deposited into the Solid Waste Management Trust Fund.

"*§ 130A-309.18. Regulation of used oil as hazardous waste.*

Nothing in this Part shall prohibit the Department from regulating used oil as a hazardous waste in a manner consistent with applicable federal law and this Article.

"*§ 130A-309.19. Coordination with other State agencies.*

The Department of Transportation shall study the feasibility of using recycled oil products in road construction activities and shall report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives annually, beginning 1 January 1991, on the results of its study.

"*§ 130A-309.20. Public used oil collection centers.*

(a) The Department shall encourage the voluntary establishment of public used oil collection centers and recycling programs and provide technical assistance to persons who organize such programs.

(b) All State agencies and businesses that change motor oil for the public are encouraged to serve as public used oil collection centers.

(c) A public used oil collection center must:

(1) Notify the Department annually that it is accepting used oil from the public; and

(2) Annually report quantities of used oil collected from the public.

(d) No person may recover from the owner or operator of a used oil collection center any costs of response actions resulting from a release of either used oil or a hazardous substance against the owner or operator of a used oil collection center if such used oil is:

(1) Not mixed with any hazardous substance by the owner or operator of the used oil collection center;

(2) Not knowingly accepted with any hazardous substances contained therein;

(3) Transported from the used oil collection center by a certified transporter pursuant to G.S. 130A-309.23; and

(4) Stored in a used oil collection center that is in compliance with this section.

(e) Subsection (d) of this section applies only to that portion of the public used oil collection center used for the collection of used oil and does not apply if the owner or operator is grossly negligent in the operation of the public used oil collection center. Nothing in this section shall affect or modify in any way the obligations or liability of any person under any other provisions of State or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances. For purposes of this section, the owner or operator of a used oil collection center may presume that a quantity of no more than five gallons of used oil accepted from any member of the public is not mixed with a hazardous substance, provided that the owner or operator acts in good faith.

"*§ 130A-309.21. Incentives program.*

(a) The Department is authorized to establish an incentives program for individuals who change their own oil to encourage them to return their used oil to a used oil collection center.

(b) The incentives used by the Department may involve the use of discount or prize coupons, prize drawings, promotional giveaways, or other activities the Department determines will promote collection, reuse, or proper disposal of used oil.

(c) The Department may contract with a promotion company to administer the incentives program.

"§ *130A-309.22. Grants to local governments.*

(a) The Department shall develop a grants program for units of local government to encourage the collection, reuse, and proper disposal of used oil. No grant may be made for any project unless the project is approved by the Department.

(b) The Department shall consider for grant assistance any unit of local government project that uses one or more of the following programs or any activity that the Department feels will reduce the improper disposal and reuse of used oil:

(1) Curbside pickup of used oil containers by a unit of local government or its designee.

(2) Retrofitting of solid waste equipment to promote curbside pickup or disposal of used oil at used oil collection centers designated by the unit of local government.

(3) Establishment of publicly operated used oil collection centers at landfills or other public places.

(4) Providing containers and other materials and supplies that the public can utilize in an environmentally sound manner to store used oil for pickup or return to a used oil collection center.

(5) Providing incentives for the establishment of privately operated public used oil collection centers.

(c) Eligible projects shall be funded according to provisions established by the Department; however, no grant may exceed twenty-five thousand dollars ($25,000).

(d) The Department shall initiate rule making on or before 1 January 1991, necessary to carry out the purposes of this section.

"§ *130A-309.23. Certification of used oil transporters.*

(a) Any person who transports over public highways after 1 January 1992, more than 500 gallons of used oil in any week must be a certified transporter or must be employed by a person who is a certified transporter.

(b) The Department of Transportation shall develop a certification program for transporters of used oil, and shall issue, deny, or revoke certifications authorizing the holder to transport used oil. Certification requirements shall help assure that a used oil transporter is familiar with appropriate rules and used oil management procedures.

(c) The Department of Transportation shall adopt rules governing certification, which shall include requirements for the following:

(1) Registration and annual reporting pursuant to G.S. 130A-309.17.

(2) Evidence of familiarity with applicable State laws and rules governing used oil transportation.

(3) Proof of liability insurance or other means of financial responsibility for any liability which may be incurred in the transport of used oil.

"§ *130A-309.24. Permits for used oil recycling facilities.*

(a) Each person who intends to operate, modify, or close a used oil recycling facility shall obtain an operation or closure permit from the Department prior to operating, modifying, or closing the facility.

(b) By 1 January 1992, the Department shall develop a permitting system for used oil recycling facilities after reviewing and considering the applicability of the permit system for hazardous waste treatment, storage, or disposal facilities.

(c) Permits shall not be required under this section for the burning of used oil as a fuel, provided:

(1) A valid air permit issued by the Department is in effect for the facility; and

(2) The facility burns used oil in accordance with applicable United States Environmental Protection Agency regulations, local government regulations, and the requirements and conditions of its air permit.

(d) No permit is required under this section for the use of used oil for the beneficiation or flotation of phosphate rock.

"§ *130A-309.25. Training of operators of solid waste management facilities.*

(a) The Department shall establish qualifications for, and encourage the development of training programs for, operators of landfills, coordinators of local recycling programs, and other solid waste management facilities.

(b) The Department shall work with accredited community colleges, vocational technical centers, State universities, and private institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be trained as operators of solid waste management facilities.

(c) A person may not perform the duties of an operator of a solid waste management facility after 1 January 1996, unless he has completed an operator training course approved by the Department. An owner of a solid waste management facility may not employ any person to perform the duties of an operator unless such person has completed an approved solid waste management facility operator training course.

(d) The Commission may adopt rules and minimum standards to effectuate the provisions of this section and to ensure the safe, healthy, and lawful operation of solid waste management facilities. The Commission may establish, by rule, various classifications for operators to address the need for differing levels of training required

to operate various types of solid waste management facilities due to different operating requirements at the facilities.

"§ *130A-309.26. Regulation of medical waste.*

(a) As used in this section:

(1) 'Sharps' means needles, syringes, and scalpel blades.

(2) 'Treatment' means any process, including steam sterilization, chemical treatment, incineration, and other methods approved by the Commission which changes the character or composition of medical waste so as to render it noninfectious.

(b) It is the intent of the General Assembly to protect the public health by establishing standards for the safe packaging, storage, treatment, and disposal of medical waste. The Commission shall adopt and the Department shall enforce rules for the packaging, storage, treatment, and disposal of:

(1) Medical waste at facilities where medical waste is generated;

(2) Medical waste from the point at which the waste is transported from the facility where it was generated;

(3) On-site and off-site incineration of medical waste; and

(4) The off-site transport, storage, treatment or disposal of medical waste.

(c) No later than 1 August 1990, the Commission shall adopt rules necessary to protect the health, safety, and welfare of the public and to carry out the purpose of this section. Such rules shall address, but need not be limited to, the packaging of medical waste, including specific requirements for the safe packaging of sharps and the segregation, storage, treatment, and disposal of medical wastes at the facilities in which such waste is generated.

"§ *130A-309.27. Landfill escrow account.*

(a) As used in this section:

(1) 'Owner or operator' means, in addition to the usual meanings of the term, any owner of record of any interest in land on which a landfill is or has been sited, and any person or corporation which owns a majority interest in any other corporation which is the owner or operator of a landfill.

(2) 'Proceeds' means all funds collected and received by the Department, including interest and penalties on delinquent fees.

(b) Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law.

(c) The owner or operator of a landfill shall establish a fee, or a surcharge on existing fees or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill. However, the disposal of solid waste by persons on their own property is exempt from the provisions of this section.

(1) The revenue-producing mechanism must produce revenue at a rate sufficient to generate funds to meet State and federal landfill closure requirements.

(2) The revenue shall be deposited in an interest-bearing escrow account to be held and administered by the owner or operator. The owner or operator shall file with the Department an annual audit of the account. The audit shall be conducted by a certified public accountant and shall be filed no later than 31 December of each year. Failure to collect or report this revenue, except as allowed in subsection (d), is a noncriminal violation, punishable by a fine of not more than five thousand dollars ($5,000) for each offense. The owner or operator may make expenditures from the account and its accumulated interest only for the purpose of landfill closure and, if such expenditures do not deplete the fund to the detriment of eventual closure, for planning and construction of resource recovery or landfill facilities. Any moneys remaining in the account after paying for proper and complete closure, as determined by the Department, shall, if the owner or operator does not operate a landfill, be deposited by the owner or operator into the general fund of the unit of local government.

(3) The revenue generated under this subsection and any accumulated interest thereon may be applied to the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with State and federal landfill closure requirements. The application or pledge may be made directly in the proceedings authorizing the bonds or in an agreement with an insurer of bonds to assure the insurer of this additional security.

(d) An owner or operator may establish proof of financial responsibility with the Department in lieu of the requirements of subsection (c). This proof may include surety bonds, certificates of deposit, securities, letter of credit, corporate guarantee, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with landfill

closure requirements. The owner or operator shall estimate the costs to the satisfaction of the Department.

(e) This section does not repeal, limit, or abrogate any other law authorizing units of local government to fix, levy, or charge rates, fees, or charges for the purpose of complying with State and federal landfill closure requirements.

(f) The Commission shall adopt rules to implement this section.

"*§ 130A-309.28. University research.*

Research, training, and service activities related to solid and hazardous waste management conducted by The University of North Carolina shall be coordinated by the Board of Governors of The University of North Carolina through the Office of the President. Proposals for research contracts and grants; public service assignments; and responses to requests for information and technical assistance by the State and units of local government, business, and industry shall be addressed by a formal process involving an advisory board of university personnel appointed by the President and chaired and directed by an individual appointed by the President. The Board of Governors of The University of North Carolina shall consult with the Department in developing the research programs and provide the Department with a copy of the proposed research program for review and comment before the research is undertaken. Research contracts shall be awarded to independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools on the same basis as those research contracts awarded to The University of North Carolina. Research activities shall include the following areas:

(1) Methods and processes for recycling solid and hazardous waste;

(2) Methods of treatment for detoxifying hazardous waste; and

(3) Technologies for disposing of solid and hazardous waste."

Sec. 3. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2B. Scrap Tire Disposal Act.

"*§ 130A-309.51. Title.*

This Part may be cited as the 'North Carolina Scrap Tire Disposal Act.'

"*§ 130A-309.52. Findings; purpose.*

(a) The General Assembly finds that:

(1) Scrap tire disposal poses a unique and troublesome solid waste management problem.

(2) Scrap tires are a usable resource that may be recycled for energy value.

(3) Uncontrolled disposal of scrap tires may create a public health and safety problem because tire piles act as breeding sites for mosquitoes and other disease-transmitting vectors, pose substantial fire hazards, and present a difficult disposal problem for landfills.

(4) A significant number of scrap tires are illegally dumped in North Carolina.

(5) It is in the State's best interest to encourage efforts to recycle or recover resources from scrap tires.

(6) It is desirable to allow units of local government to control tire disposal for themselves and to encourage multicounty, regional approaches to scrap tire disposal and collection.

(7) It is desirable to encourage reduction in the volume of scrap tires being disposed of at public sanitary landfills.

(b) The purpose of this Part is to provide statewide guidelines and structure for the environmentally safe disposal of scrap tires to be administered through units of local government.

"*§ 130A-309.53. Definitions.*

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) 'Collection site' means a site used for the storage of scrap tires.

(2) 'Disposal fee' is any amount charged by a tire collector, tire processor, or unit of local government in exchange for accepting scrap tires.

(3) 'In-county scrap tire' means any scrap tire brought for disposal from inside the county in which the collection or processing site is located.

(4) 'Out-of-county scrap tire' means any scrap tire brought for disposal from outside the county in which the collection or processing site is located.

(5) 'Processing site' means a site actively used to produce or manufacture usable materials, including fuel, from scrap tires. Commercial enterprises processing scrap tires shall not be considered solid waste management facilities insofar as the provisions of G.S. 130A-294(a)(4) and G.S. 130A-294(b) are concerned.

(6) 'Scrap tire' means a tire that is no longer suitable for its original, intended purpose because of wear, damage, or defect.

(7) 'Tire' means a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle as defined in G.S. 20-4.01(23).

(8) 'Tire collector' means a person who owns or operates a site used for the storage, collection, or deposit of more than 50 scrap tires.

(9) 'Tire hauler' means a person engaged in the picking up or transporting of scrap tires for the purpose of storage, processing, or disposal.

(10) 'Tire processor' means a person who engages in the processing of scrap tires or one who owns or operates a tire processing site.

(11) 'Tire retailer' means a person who engages in the retail sale of a tire in any quantity for any use or purpose by the purchaser other than for resale.

"§ *130A-309.54. Scrap tire disposal fee.*

(a) A fee is imposed on the privilege of selling or using new motor vehicle tires in this State. This fee is in addition to all other taxes and fees imposed.

(b) The definitions in G.S. 105-164.3 apply to G.S. 130A-309.55 and G.S. 130A-309.56, except the term 'sale' does not include a lease or rental.

(c) The fees imposed by G.S. 130A-55 and G.S. 130A-56 shall be used by each county for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60.

(d) The fees imposed by G.S. 130A-55 and G.S. 130A-56 shall be administered in the same manner as the tax imposed by Article 5 of Chapter 105 of the General Statutes. All other provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes shall apply to this Part to the extent they are not inconsistent with the provisions of this Part. However, the exemptions and exclusions under G.S. 105-164.13 and G.S. 105-164.3(19) and the lower rates of tax imposed have no effect on the scrap tire disposal fee. The refund provisions under G.S. 105-164.14(a), (b), and (c) do not apply. The Secretary of Revenue may administer, enforce, collect and distribute the scrap tire disposal fee. The administrative interpretation made by the Secretary of Revenue with respect to the North Carolina Sales and Use Tax Act applies to the scrap tire disposal fee to the extent they are not inconsistent.

"§ *130A-309.55. Fee upon sale.*

(a) Beginning 1 January 1990, a scrap tire disposal fee shall be imposed upon the retail sale of each new motor vehicle tire at the rate of one percent (1%) of the sales price for each new tire sold. This

fee shall be imposed upon the tire retailer's net taxable sales and shall be paid and collected in the same manner as the State's sales tax under Article 5 of Chapter 105 of the General Statutes. The fee is not subject to the general sales tax under Article 5 of Chapter 105 of the General Statutes. The scrap tire disposal fee does not apply to recapped tires or to the lease or rental of tires.

(b) Ten percent (10%) of the proceeds of the scrap tire disposal fee shall be deposited on a quarterly basis in the Solid Waste Management Trust Fund. The Secretary of Revenue shall distribute the remainder of the net proceeds of the scrap tire disposal fee quarterly among the counties on a per capita basis according to the most recent annual population estimates certified by the Office of State Budget and Management to the Secretary of Revenue.

"*§ 130A-309.56. Fee for use.*

(a) Beginning 1 January 1990, all persons shall be required to pay a scrap tire disposal fee for the use of new motor vehicle tires in this State. This fee shall be imposed at the rate of one percent (1%) of the cost price of each new tire.

(b) Where a fee under G.S. 130A-309.55 has already been paid on the purchase of a new motor vehicle tire, then that fee shall be credited against the fee imposed by this section. Where a fee substantially similar to the fee under G.S. 130A-309.55 has been paid in another state, then that fee shall be credited against the fee imposed by this section.

(c) The fee imposed by this section shall be paid and collected in the same manner as the tax imposed under G.S. 105-164.6.

(d) Ten percent (10%) of the proceeds of the scrap tire disposal fee shall be deposited on a quarterly basis in the Solid Waste Management Trust Fund. The Secretary of Revenue shall distribute the remainder of the net proceeds of the scrap tire disposal fee quarterly among the counties on a per capita basis according to the most recent annual population estimates certified by the Office of State Budget and Management to the Secretary of Revenue.

"*§ 130A-309.57. Scrap tire disposal program.*

(a) The owner or operator of any scrap tire collection site shall, within six months after the effective date of this section, provide the Department with information concerning the site's location, size, and the approximate number of scrap tires that are accumulated at the site and shall initiate steps to comply with subsection (b) of this section.

(b) On or after 1 July 1990:

(1) A person may not maintain a scrap tire collection site or a scrap tire disposal site unless the site is permitted.

(2) It is unlawful for any person to dispose of scrap tires in the State unless the scrap tires are disposed of at a scrap

tire collection site or at a tire disposal site, or disposed of for processing at a scrap tire processing facility.

(c) By 1 January 1990, the Commission shall adopt rules to carry out the provisions of this section. Such rules shall:

(1) Provide for the administration of scrap tire collector and collection center permits and scrap tire disposal site permits, which may not exceed two hundred fifty dollars ($250.00) annually;

(2) Set standards for scrap tire processing facilities and associated scrap tire sites, scrap tire collection centers, and scrap tire collectors; and

(3) Authorize the final disposal of scrap tires at a permitted solid waste disposal facility provided the tires have been cut into sufficiently small parts to assure their proper disposal.

(d) A permit is not required for:

(1) A tire retreading business where fewer than 1,000 scrap tires are kept on the business premises;

(2) A business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,000 of these tires are kept on the business premises; or

(3) A retail tire-selling business which is serving as a scrap tire collection center if fewer than 1,000 scrap tires are kept on the business premises.

(e) The Department shall encourage the voluntary establishment of scrap tire collection centers at retail tire-selling businesses, scrap tire processing facilities, and solid waste disposal facilities, to be open to the public for the deposit of used and scrap tires. The Department may establish an incentives program for individuals to encourage them to return their used or scrap tires to a scrap tire collection center.

"§ *130A-309.58. Disposal of scrap tires.*

(a) Each county is responsible for providing for the disposal of scrap tires located within its boundaries in accordance with the provisions of this Part and any rules issued pursuant to this Part. The following are permissible methods of scrap tire disposal:

(1) Incinerating;

(2) Retreading;

(3) Constructing crash barriers;

(4) Controlling soil erosion when whole tires are not used;

(5) Chopping or shredding;

(6) Grinding into crumbs for use in road asphalt, tire derived fuel, and as raw material for other products;

(7) Slicing vertically, resulting in each scrap tire being divided into at least two pieces;

(8) Sludge composting;
(9) Using for agriculture-related purposes;
(10) Chipping for use as an oyster cultch as approved by rules adopted by the Marine Fisheries Commission;
(11) Cutting, stamping, or dyeing tires;
(12) Pyrolizing and other physico-chemical processing;
(13) Hauling to out-of-State collection or processing sites; and
(14) Monofilling split, ground, chopped, sliced, or shredded scrap tires.

(b) The Commission may adopt rules approving other permissible methods of scrap tire disposal. Landfilling of whole scrap tires is prohibited.

(c) Units of local government may enter into joint ventures or other cooperative efforts with other units of local government for the purpose of disposing of scrap tires. Units of local government may enter into leases or other contractual arrangements with units of local government or private entities in order to dispose of scrap tires.

(d) Each county is responsible for developing a description of scrap tire disposal procedures. These procedures shall be included in any solid waste management plan required by the Department under this Article. Further, any revisions to the initial description of the scrap tire disposal procedures shall be forwarded to the Department.

(e) A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap tire disposal for that county. The unit of local government or contracting party may charge a disposal fee for the disposal of in-county scrap tires and such disposal fees shall be assessed only to the extent that the cost per tire of disposal exceeds the scrap tire disposal fees received by the county during the preceding 12-month period, divided by the number of tires disposed of within the county according to the tire disposal procedures during that period. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires from tire manufacturers, retreaders not engaged in the retail sale of new tires, and any others subject to the scrap tire disposal fee, regardless of where such scrap tires originated, and such fees shall not exceed the cost of disposal for such tires. The unit of local government or contracting party also may charge a disposal fee for the disposal of out-of-county and out-of-State scrap tires at the county's site.

(f) Every tire retailer or other person disposing of scrap tires shall complete and sign a certification form prescribed by the Department and distributed to each county, certifying that the tires were collected in the normal course of business for disposal, the county in which the tires were collected, and the number of tires to be disposed of. This

form also shall be completed and signed by the tire hauler, certifying that the load contains the same tires that were received from the tire retailer or other person disposing of scrap tires. The tire hauler shall present this certification form to the tire processor or tire collector at the time of delivery of the scrap tires for disposal, collection, or processing. Copies of these certification forms shall be retained for a minimum of three years after the date of delivery of the scrap tires.

(g) The provisions of subsection (f) of this section do not apply to tires that are brought for disposal in quantities of five or less by someone other than a tire collector, tire processor, or tire hauler.

"§ *130A-309.59. Registration of tire haulers.*

(a) Before engaging in the hauling of scrap tires in this State, any tire hauler must register with the Department whereupon the Department shall issue to the tire hauler a scrap tire hauling identification number. A tire retailer licensed under G.S. 105-164.29 and solely engaged in the hauling of scrap tires received by it in connection with the retail sale of replacement tires is not required to register under this section.

(b) Each tire hauler shall furnish its hauling identification number on all certification forms required under G.S. 130A-309.58(f). Any tire retailer engaged in the hauling of scrap tires and not required by subsection (a) of this section to be registered shall supply its merchant identification number on all certification forms required by G.S. 130A-309.58(f).

"§ *130A-309.60. Nuisance tire collection sites.*

(a) On or after 1 July 1990, if the Department determines that a tire collection site is a nuisance, it shall notify the person responsible for the nuisance and request that the tires be processed or removed within 90 days. If the person fails to take the requested action within 90 days, the Department shall order the person to abate the nuisance within 90 days. If the person responsible for the nuisance is not the owner of the property on which the tire collection site is located, the Department may order the property owner to permit abatement of the nuisance. If the person responsible for the nuisance fails to comply with the order, the Department shall take any action necessary to abate the nuisance, including entering the property where the tire collection site is located and confiscating the scrap tires, or arranging to have the scrap tires processed or removed.

(b) When the Department abates the nuisance pursuant to subsection (a) of this section, the person responsible for the nuisance shall be liable for the actual costs incurred by the Department for its nuisance abatement activities and its administrative and legal expenses related to the abatement. The Department may ask the Attorney General to initiate a civil action to recover these costs from the person

responsible for the nuisance. Nonpayment of the actual costs incurred by the Department shall result in the imposition of a lien on the owner's real property on which the tire collection site is located.

(c) This section does not apply to any of the following:

(1) A retail business premises where tires are sold if no more than 500 scrap tires are kept on the premises at one time;

(2) The premises of a tire retreading business if no more than 3,000 scrap tires are kept on the premises at one time;

(3) A premises where tires are removed from motor vehicles in the ordinary course of business if no more than 500 scrap tires are kept on the premises at one time;

(4) A solid waste disposal facility where no more than 60,000 scrap tires are stored above ground at one time if all tires received for storage are processed, buried, or removed from the facility within one year after receipt;

(5) A site where no more than 250 scrap tires are stored for agricultural uses; and

(6) A construction site where scrap tires are stored for use or used in road surfacing and construction of embankments.

(d) The descending order of priority for the Department's abatement activities under subsection (a) of this section is as follows:

(1) Tire collection sites determined by the Department to contain more than 1,000,000 tires;

(2) Tire collection sites which constitute a fire hazard or threat to public health;

(3) Tire collection sites in densely populated areas; and

(4) Any other tire collection sites that are determined to be a nuisance.

(e) This section does not change the existing authority of the Department to enforce any existing laws or of any person to abate a nuisance.

(f) As used in this section, 'nuisance' means an unreasonable danger to public health, safety, or welfare or to the environment.

"§ 130A-309.61. Preemption.

This Part preempts any local ordinance regarding the disposal of scrap tires to the extent that any local ordinance is inconsistent with this Part or rules adopted pursuant to this Part. A unit of local government may not charge any fees for the disposal of scrap tires except as authorized by this Part.

"§ 130A-309.62. Fines and penalties.

Any person who knowingly hauls or disposes of a tire in violation of this Part or the rules adopted pursuant to this Part shall be assessed a civil penalty of fifty dollars ($50.00) per violation. Each tire hauled

or disposed of in violation of this Part or rules adopted pursuant to this Part constitutes a separate violation."

Sec. 4. Effective with respect to acts committed on or after the effective date of this act, G.S. 90-113.4A is repealed.

Sec. 5. G.S. 120-70.44 is amended by adding a new sentence at the end thereof to read:

"Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly."

Sec. 6. Article 2 of Chapter 136 of the General Statutes is amended by adding a section to read:

"*§ 136-285. Use of recyclable materials in construction.*

(a) It is the intent of the General Assembly that the Department of Transportation continue to expand its current use of recovered materials in its construction programs.

(b) The General Assembly declares it to be in the public interest to find alternative ways to use certain recyclable materials that currently are part of the solid waste stream and that contribute to problems of declining space in landfills. To determine the feasibility of using recyclable materials for highway construction, the Department shall undertake a literature search to evaluate the potential for using:

(1) Ground rubber from tires in road resurfacing or subbase materials; and

(2) Recycled mixed-plastic materials for guard rail posts, right-of-way fence posts, and sign supports.

(c) As a part of its scheduled projects, the Department may conduct such additional research as it determines to be warranted, which may include demonstration projects, on the use of recyclable materials in highway construction.

(d) The Department shall review and revise existing bid procedures and specifications for the purchase or use of products and materials to eliminate any procedures and specifications that explicitly discriminate against products and materials with recycled content, except where the procedures and specifications are necessary to protect the health, safety, and welfare of the people of this State.

(e) The Department shall review and revise its bid procedures and specifications on a continuing basis to encourage the use of products and materials with recycled content and shall, in developing new procedures and specifications, encourage the use of products and materials with recycled content.

(f) All agencies shall cooperate with the Department in carrying out the provisions of this section."

Sec. 7. Effective with respect to acts committed on or after the effective date of this act, G.S. 14-399.1 is repealed.

Sec. 7.1. Chapter 491 of the 1989 Session Laws is repealed.

Sec. 8. Effective with respect to acts committed on or after the effective date of this act, G.S. 14-399 reads as rewritten:

"§ *14-399. Littering.*

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

(1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or

(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is ~~so~~ blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

~~(c) As used in this section, the word 'litter' shall be defined as any rubbish, waste material, cans, refuse, garbage, trash, debris, dead animals or discarded materials of every kind and description; the word 'vehicle' shall be defined as in G.S. 20-4.01(49); and the word 'watercraft' shall be defined as any boat or vessel used for transport upon or across the water.~~

~~(d) A violation of this section is a misdemeanor punishable by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00) for the first offense. Any second or subsequent offense is punishable by a fine of not less than fifty dollars ($50.00) nor more than three hundred dollars ($300.00). In lieu of a fine or~~

~~any portion thereof, or in addition to a fine, any violation of this section may also be punished by a term of community service.~~

~~(e) Wildlife protectors, as defined in G.S. 113-128(9), are authorized to enforce the provisions of this section.~~

(c) Any person who violates this section in an amount not exceeding 15 pounds or 27 cubic feet and not for commercial purposes is guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00) for the first offense. Any second or subsequent offense is punishable by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00). Notwithstanding the foregoing, any person who violates this section by disposing, in any manner, of litter not exceeding 15 pounds or 27 cubic feet not for commercial purposes upon a beach is guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for a first or any subsequent offense. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds or 27 cubic feet, but not exceeding 500 pounds in weight or 100 cubic feet in volume, and not for commercial purposes, is guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00). In addition, the court shall require the violator to pick up litter or perform other community service commensurate with the offense committed. Further, if the violation involves the use of a motor vehicle, upon a finding of guilt, regardless of whether adjudication is withheld or of whether imposition of sentence is withheld, deferred, or suspended, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to G.S. 58-30.4 for a finding of guilt under this subsection.

(e) Any person who violates this section in an amount exceeding 500 pounds or 100 cubic feet or in any quantity for commercial purposes, or dumps litter which is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class J felony. In addition, the court may order the violator to:

(1) Remove, or render harmless, the litter that he dumped in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his dumping litter in violation of this section; or

(3) Perform community public service relating to the removal of litter dumped in violation of this section or to the restoration of an area polluted by litter dumped in violation of this section.

(f) A court may enjoin a violation of this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds or more than 100 cubic feet of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) 'Aircraft' means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

(2) 'Commercial vehicle' means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.

(3) 'Law enforcement officer' means any officer of the North Carolina Highway Patrol, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, 'law enforcement officer' means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);

(4) 'Litter' means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or

equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. 'Litter' does not include political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) 'Vehicle' has the same meaning as in G.S. 20-4.01(49); and

(6) 'Watercraft' means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

Sec. 9. G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission ~~for [of]~~ of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values	
Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3

No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

The ~~[above]~~ above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Public drunk within a vehicle
Possession of alcoholic beverages
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to

attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

Sec. 10. It is the intent of the General Assembly to monitor progress in the State with respect to solid waste management. In particular, the General Assembly will evaluate progress toward the solid waste management goals established in G.S. 130A-309.04 and will consider increasing the recycling goal as appropriate. If the General Assembly determines that there is inadequate progress in meeting the solid waste management goals established for the State, the General Assembly will consider additional requirements and incentives, including economic incentives to encourage recycling and discourage landfilling, and additional methods of financing needed improvements in the solid waste management program at both the State and local levels.

Sec. 11. (a) The Secretary of Administration, in cooperation with the Department of Environment, Health, and Natural Resources and with input from other interested parties having expertise in solid waste management, shall review existing procurement procedures and specifications for the purchase of paper and paper products to

determine the economic and technological feasibility of using paper and paper products with recycled content.

(b) The Secretary of Administration shall report his findings and recommendations regarding the use of paper and paper products with recycled content to the Governor, the Environmental Review Commission, and the General Assembly by 1 May 1990.

(c) All State agencies and units of local government shall cooperate with the Secretary of Administration in carrying out the provisions of this section.

Sec. 12. The Department of Transportation shall report to the Governor, the Environmental Review Commission, and the General Assembly by 1 January 1991 as to its findings and recommendations regarding the use of recyclable materials in highway construction.

Sec. 13. Neither the definition of "medical waste" nor any other provision of this act shall be construed to require that rules or standards adopted by the Commission for Health Services for the management of infectious and noninfectious medical waste be identical or similar.

Sec. 14. All scrap tires located in North Carolina shall be disposed of in accordance with the provisions of the North Carolina Scrap Tire Disposal Act as enacted by this act beginning 1 March 1990.

Sec. 15. The Department of Revenue may retain the actual costs of administering the fees collected by the Department under the North Carolina Scrap Tire Disposal Act as enacted by Section 3 of this act.

Sec. 16. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement this act by using such funds as may be otherwise appropriated to the agency for the implementation of this act and this act shall not be construed to obligate any State agency to implement the provisions of this act beyond the extent to which such funds are appropriated.

Sec. 17. This act shall become effective 1 October 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 1098 **CHAPTER 785**

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF A CAPITAL IMPROVEMENTS PROJECT AT NORTH CAROLINA MEMORIAL HOSPITAL.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to authorize construction, by North Carolina Memorial Hospital of an Administrative Office Building, in the amount of $8,774,200, and to authorize the financing of this capital improvements project from funds available to the Hospital from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of funds, but not including funds appropriated from the General Fund of the State.

Sec. 2. The project authorized to be constructed and financed as provided in Section 1 of this act is as follows:

1. North Carolina Memorial Hospital
   Administrative Office Building $8,774,200

Sec. 3. The Director of the Budget may consult with the Advisory Budget Commission when, in his opinion it is in the best interest of the State to do so, and may, upon the request of The University of North Carolina Board of Governors, authorize a decrease in the scope or a change in the method of funding of the project authorized by this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 1177 **CHAPTER 786**

AN ACT TO ADJUST FEES IN THE GENERAL COURT OF JUSTICE AND FOR REVOCATION OF A DRIVER'S LICENSE FOR DRIVING WHILE IMPAIRED AND TO MAKE A TECHNICAL CORRECTION IN THE METHOD OF COLLECTING THE FEE FOR INVESTING FUNDS PLACED WITH A CLERK OF SUPERIOR COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or *nolo contendere*, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so ~~provides:~~ provides, and that no costs may be assessed when a case is dismissed.

(1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of four dollars ($4.00), to be remitted to the county wherein the arrest was

made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.

(2) For the use of the courtroom and related judicial facilities, the sum of five dollars ($5.00) in the district court, including cases before a magistrate, and the sum of twenty-three dollars ($23.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.

(3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of seven dollars and twenty-five cents ($7.25), to be remitted to the State Treasurer. Fifty cents (50¢) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents ($5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents ($1.25) being administered in accordance with the provisions of G.S. 143-166.50(e). One dollar ($1.00) of this sum shall

be administered as is provided in Article 12F of Chapter 143 of the General Statutes.

(3a) For the supplemental pension benefits of sheriffs, the sum of seventy-five cents (75¢), to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.

(4) For support of the General Court of Justice, the sum of ~~twenty-three dollars ($23.00)~~ thirty-three dollars ($33.00) in the district court, including cases before a magistrate, and the sum of ~~thirty dollars ($30.00)~~ forty dollars ($40.00) in the superior court, to be remitted to the State Treasurer."

Sec. 2. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of five dollars ($5.00) in cases heard before a magistrate, and the sum of nine dollars ($9.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of ~~thirty-seven dollars ($37.00)~~ forty-seven dollars ($47.00) in the superior court, and the sum of ~~twenty-two dollars ($22.00)~~ thirty-two dollars ($32.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~ten dollars ($10.00)~~ twenty dollars ($20.00). Sums collected under this subsection shall be remitted to the State Treasurer."

Sec. 3. G.S. 7A-308(a)(16) reads as rewritten:

"(16) On all funds placed with the clerk by virtue or color of his office ~~and administered and invested pursuant to G.S. 7A-112, a fee equal to five percent (5%) not to exceed one thousand dollars ($1,000) of the principal fund; provided, said fee shall not exceed the amount of any investment earnings on the fund. For purposes of assessing a commission, receipts are cumulative for the life of an account~~, a fee equal to five percent (5%) of those funds, subject to the following conditions:

a. The fee shall apply only to funds invested by the clerk pursuant to G.S. 7A-112;

b. The fee shall be charged and deducted from the funds and forwarded to the State Treasurer before the funds are invested, and only the balance shall be invested;

c. Over the life of an account, the fees charged on the initial funds and all funds subsequently placed with the clerk for that account shall not exceed the investment earnings on the account or one thousand dollars ($1,000), whichever is less; and

d. When all funds in an account are finally withdrawn and distributed by the clerk, any fees charged in excess of cumulative investment earnings shall be refunded to the person or persons to whom the account is distributed."

Sec. 4. G.S. 20-7(i1) reads as rewritten:

"(i1) Any person whose driver's license or other privilege to operate a motor vehicle in this State has been suspended, canceled or revoked pursuant to the provisions of this ~~Chapter~~ Chapter, other than G.S. 20-17(2), shall pay a restoration fee of twenty-five dollars ~~($25.00)~~ ($25.00). A person whose driver's license has been revoked under G.S. 20-17(2) shall pay a restoration fee of fifty dollars ($50.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds five million dollars ($5,000,000), and shall pay a restoration fee of twenty-five dollars ($25.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new driver's license or the restoration of such driver's license or privilege; such restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was suspended, canceled, revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar ($25.00) fee, and the first twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds five million dollars ($5,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of five million dollars ($5,000,000)."

Sec. 5. This act shall become effective August 15, 1989. Section 1 shall apply to offenses committed on or after that date; Section 2 shall apply to actions initiated on or after that date; and Section 4 shall apply to revocations made on or after that date.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 1320 **CHAPTER 787**

AN ACT TO ESTABLISH REGULATORY FEES FOR PUBLIC UTILITIES TO DEFRAY THE COST TO THE UTILITIES COMMISSION AND THE PUBLIC STAFF OF REGULATING PUBLIC UTILITIES IN THE INTEREST OF THE PUBLIC.

The General Assembly of North Carolina enacts:

Section 1. Article 14 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"*§ 62-302. Regulatory fee.*

(a) Fee Imposed. It is the policy of the State of North Carolina to provide fair regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The cost of regulating public utilities is a burden incident to the privilege of operating as a public utility. Therefore, for the purpose of defraying the cost of regulating public utilities, every public utility subject to the jurisdiction of the Commission shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section. The fees collected shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

(b) Rate.

(1) For the 1989-90 fiscal year, the regulatory fee shall be the greater of (i) twelve hundredths percent (0.12%) of each public utility's North Carolina jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents ($6.25) each quarter.

(2) For fiscal years beginning on or after July 1, 1990, the regulatory fee shall be the greater of (i) a percentage rate, established by the General Assembly, of each public utility's

North Carolina jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents ($6.25) each quarter.

When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose a percentage rate of the regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143-11. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. The General Assembly shall set the percentage rate of the regulatory fee by law.

The percentage rate may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Commission and the Public Staff for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated increase or decrease in North Carolina jurisdictional revenues.

(3) If the Commission, the Public Staff, or both experience a revenue shortfall, the Commission shall implement a temporary regulatory fee surcharge to avert the deficiency that would otherwise occur. In no event may the total percentage rate of the regulatory fee plus any surcharge established by the Commission exceed twenty-five hundredths percent (0.25%).

(4) As used in this section, the term 'North Carolina jurisdictional revenues' means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction.

(c) When Due. The regulatory fee imposed under this section is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter. Every public utility subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Commission. The report shall state the public utility's total North

Carolina jurisdictional revenues for the preceding quarter and shall be accompanied by any supporting documentation that the Commission may by rule require. Receipts shall be reported on an accrual basis.

If a public utility's report for the first quarter of any fiscal year shows that application of the percentage rate would yield a quarterly fee of twenty-five dollars ($25.00) or less, the public utility shall pay an estimated fee for the entire fiscal year in the amount of twenty-five dollars ($25.00). If, after payment of the estimated fee, the public utility's subsequent returns show that application of the percentage rate would yield quarterly fees that total more than twenty-five dollars ($25.00) for the entire fiscal year, the public utility shall pay the cumulative amount of the fee resulting from application of the percentage rate, to the extent it exceeds the amount of fees, other than any surcharge, previously paid.

(d) Use of Proceeds. A special fund in the office of State Treasurer, the Utilities Commission and Public Staff Fund, is created. The fees collected pursuant to this section and all other funds received by the Commission or the Public Staff shall be deposited in the Utilities Commission and Public Staff Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Monies in the Fund shall only be spent pursuant to appropriation by the General Assembly.

The Utilities Commission and Public Staff Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of the Fund shall revert to the General Fund. All funds credited to the Utilities Commission and Public Staff Fund shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public as provided by this Chapter."

Sec. 2. G.S. 62-301 is repealed.

Sec. 3. This act does not affect the rights or liabilities of the State, a public utility, or another person arising under a statute repealed by this act before its repeal; nor does it affect the right to any refund or credit of a fee that would otherwise have been available under the repealed statute before its repeal.

Sec. 4. Nothing herein contained shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act.

Sec. 5. This act shall become effective July 1, 1989, shall apply to public utility North Carolina jurisdictional revenues earned on or after that date, and shall expire June 30, 1991, and the proceeds and interest remaining in the Fund created by this act upon expiration of this act shall revert to the General Fund .

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 1336 **CHAPTER 788**

AN ACT TO INCREASE THE PERCENTAGE OF GAS TAX PROCEEDS TRANSFERRED EACH YEAR TO THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-446.2(a), as rewritten by Chapter 692 of the 1989 Session Laws, reads as rewritten:

"(a) The North Carolina Wildlife Resources Commission shall receive ~~one eighth of one percent (1/8 of 1%)~~ one-sixth of one percent (1/6 of 1%) of the net proceeds of the taxes on motor fuels levied under G.S. 105-434 and deposited in the Highway Fund. This percentage amount shall be paid in accordance with the accounting periods as set forth under G.S. 105-440(a). As used in this section 'net proceeds' means the amount of tax deposited in the Highway Fund less the amount of any refunds charged to the Highway Fund."

Sec. 2. This act is effective upon ratification and applies to proceeds of taxes levied on or after July 1, 1990.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 242 **CHAPTER 789**

AN ACT TO AMEND THE DEFINITION OF PRIVATE PASSENGER MOTOR VEHICLE FOR INSURANCE RATING PURPOSES AND TO PROVIDE FOR THE REGULATION OF EXTENDED WARRANTIES BY THIRD PARTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-131.35A(1) reads as rewritten:

"*§ 58-131.35A. Other definitions.*

As used in this Article and in Articles 12B and 25A of this Chapter:

(1) 'Private passenger motor vehicle' means:

a. A motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by the policy named insured and that is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or

b. ~~A motor vehicle with a pick-up body, a delivery sedan or a panel truck that is owned by an individual or by~~

~~husband and wife or individuals who are residents of the same household and that is not customarily used in the occupation, profession, or business of the insured other than farming or ranching. Such vehicles owned by a family farm copartnership or corporation shall be considered owned by an individual for purposes of this Article; or~~ A motor vehicle that is a pickup truck or van that is owned by an individual or by husband and wife or individuals who are residents of the same household if it:

1. Has a gross vehicle weight as specified by the manufacturer of less than 10,000 pounds; and
2. Is not used for the delivery or transportation of goods or materials unless such use is (i) incidental to the insured's business of installing, maintaining, or repairing furnishings or equipment, or (ii) for farming or ranching.

Such vehicles owned by a family farm copartnership or a family farm corporation shall be considered owned by an individual for the purposes of this section; or

c. A motorcycle, motorized scooter or other similar motorized vehicle not used for commercial purposes."

Sec. 2. G.S. 58-3.1 reads as rewritten:

"*§ 58-3.1. Warranties by manufacturers, distributors, or sellers of goods or services.*

(a) As used in this section:

(1) 'Goods' means all things that are moveable at the time of sale or at the time the buyer takes possession. 'Goods' includes things not in existence at the time the transaction is entered into; and includes things that are furnished or used at the time of sale or subsequently in modernization, rehabilitation, repair, alteration, improvement, or construction on real property so as to become a part of real property whether or not they are severable from real property.

(2) 'Services' means work, labor, and other personal services.

(b) Any warranty made solely by a manufacturer, distributor, or seller of goods or services without charge, or an extended warranty offered as an option and made solely by a manufacturer, distributor, or seller of goods or services for charge, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or any other remedial measure, including replacement of goods or repetition of services, shall not be a contract of insurance under this Chapter.

(c) Nothing in this section affects the provisions of Article 3C of this Chapter. Any warranty or extended warranty made by any person

other than the manufacturer, distributor, or seller of the warranted goods or services is a contract of insurance.

(d) As used in this subsection, the term 'home appliances' includes but is not limited to: Clothes washing machines and dryers; kitchen appliances; vacuum cleaners; sewing machines; home audio or video electronic equipment; home electronic data processing equipment; and heaters and air conditioners, other than permanently installed units using internal ductwork. Notwithstanding subsection (c) of this section, a corporation may be organized solely for the purpose of providing third party extended warranties for home appliances; provided that such corporation escrows or reserves, in a bank or banks approved by the Commissioner, a percentage of the corporation's fees for such extended warranties, as required by rules adopted by the Commissioner; and provided that such escrowed or reserved money shall be used only for the payment of claims under such extended warranties during the periods of the warranties. Every such corporation shall be subject to the provisions of Article 3A of this Chapter and G.S. 58-9.7, 58-16, 58-16.1, 58-16.2, 58-17, 58-18, 58-21, 58-22, 58-25, 58-25.1, 58-27, and 58-63. The Commissioner is authorized to adopt rules to further the purposes of this subsection. Upon compliance with the provisions of this subsection and rules adopted by the Commissioner, such corporation shall be issued a certificate of authority to provide such extended warranties."

Sec. 3. Section 1 of this act shall become effective February 1, 1990, and shall apply to policies written on or after that date. Section 2 of this act shall become effective January 1, 1990. This section is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 1062 **CHAPTER 790**

AN ACT TO AMEND THE LIMITATIONS ON SEMITRAILERS ON CERTAIN NORTH CAROLINA HIGHWAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-115.1(b) reads as rewritten:

"(b) Motor vehicle combinations consisting of a semitrailer of not more than ~~48~~ 53 feet in length and a truck tractor may be operated on the interstate highways (except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2311(i)) and federal-aid primary system highways designated by the United States Secretary of Transportation provided that any semitrailer in excess of

48 feet in length shall not be permitted unless the distance between the kingpin of the trailer and the rearmost axle or a point midway between the two rear axles, if the two rear axles are a tandem axle, does not exceed 41 feet; and provided that any semitrailer in excess of 48 feet is equipped with a rear underride guard of substantial construction consisting of a continuous lateral beam extending to within four inches of the lateral extremities of the semitrailer and located not more than 22 inches from the surface as measured with the vehicle empty and on a level surface."

Sec. 2. G.S. 20-116(a) reads as rewritten:

"(a) The total outside width of any vehicle or the load thereon shall not exceed 96 inches, except as otherwise provided in this section: Provided that when hogsheads of tobacco are being transported, a tolerance of five inches shall be allowed. Provided, further, that vehicles (other than passenger buses) which do not exceed the overall width of 102 inches and otherwise provided in this section may be operated in accordance with G.S. 20-115.1(c), (f), and (g)."

Sec. 3. G.S. 20-115.1 is amended by adding a new subsection to read:

"(h) Any owner of a semitrailer less than 50 feet in length in violation of subsections (a) or (b) is responsible for an infraction and is subject to a penalty of one hundred dollars ($100.00). Any owner of a semitrailer 50 feet or greater in length in violation of subsection (b) is responsible for an infraction and subject to a penalty of two hundred dollars ($200.00)."

Sec. 3.1. G.S. 20-115.1 is amended by adding a new subsection to read:

"(i) Any driver of a vehicle with a semitrailer less than 50 feet in length violating subsections (a) or (b) of this section is guilty of a misdemeanor punishable by a fine of one hundred dollars ($100.00). Any driver of a vehicle with a semitrailer 50 feet or more in length violating subsection (b) of this section is guilty of a misdemeanor punishable by a fine of two hundred dollars ($200.00)."

Sec. 5. The Highway Safety Research Center at the University of North Carolina shall conduct a study of the safety implications of this act and shall submit a report by January 1, 1991 for consideration by the General Assembly during the 1991 Session.

Sec. 6. This act is effective January 1, 1990.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 1107 **CHAPTER 791**

AN ACT TO ALLOW A PERSON WHOSE MEMBERSHIP WAS INVOLUNTARILY TERMINATED IN THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM TO RECEIVE A RETIREMENT ALLOWANCE UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-3(3) reads as rewritten:

"(3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member: Provided that on and after July 1, 1967, should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member; provided further that the period of absence from service shall be computed from January 1, 1962, or later date of separation for any member whose contributions were not withdrawn prior to July 1, 1967: Provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.

Notwithstanding the foregoing, any persons whose membership was terminated under the provisions set forth above who had five or more years of creditable service and had not effected a return of contributions may elect to receive a retirement allowance on or after age 60; provided that this member may retire only upon written application to the Board of Trustees setting forth at which time, not less than 30 days nor more than 90 days subsequent to the execution and filing, he desires to be retired."

Sec. 2. In order to fund the provisions of this act, the Board of Trustees of the Teachers' and State Employees' Retirement System, with the advice of its consulting actuary, shall apply unencumbered actuarial gain remaining after application of this gain to cost-of-living increases for retired members and any other increases in retirement benefits contained in the 1989-90 Current Operating Appropriations Act, and shall allocate the percentage of payroll contribution rates for employers among the normal and accrued liability contributions to the Retirement System without an increase in the total employer contribution rate and without an increase in the scheduled amortization

period for liquidation of unfunded accrued liabilities in the Retirement System.

Sec. 3. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 1311 **CHAPTER 792**

AN ACT TO PROVIDE INCOME TAX EXEMPTIONS FOR ALL RETIREES AND TO INCREASE STATE AND LOCAL RETIREMENT BENEFITS.

The General Assembly of North Carolina enacts:

Part I.

Retirement Tax Exemptions.

Section 1.1. G.S. 105-134.6(b), as enacted by Chapter 728 of the 1989 Session Laws, is amended by adding a new subdivision to read:

"(6) a. An amount, not to exceed four thousand dollars ($4,000), equal to the sum of the amount calculated in subparagraph b. plus the amount calculated in subparagraph c.

b. The amount calculated in this subparagraph is the amount received during the taxable year from one or more state, local, or federal government retirement plans.

c. The amount calculated in this subparagraph is the amount received during the taxable year from one or more retirement plans other than state, local, or federal government retirement plans, not to exceed a total of two thousand dollars ($2,000) in any taxable year.

d. In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the maximum dollar amounts provided in this subdivision for various types of retirement benefits apply separately to each spouse's benefits."

Sec. 1.2. G.S. 105-134.1(13), as enacted by Senate Bill 51, Chapter 728 of the 1989 Session Laws, reads as rewritten:

"(13) Retirement benefits. Amounts paid to a former employee or the beneficiary of a former employee under a written retirement plan established by the employer to provide payments to an employee or the beneficiary of an employee after the end of the employee's employment with the employer where the right to receive the payments is

based upon the employment relationship. With respect to a self-employed individual or the beneficiary of a self-employed individual, the term means amounts paid to the individual or beneficiary of the individual under a written retirement plan established by the individual to provide payments to the individual or the beneficiary of the individual after the end of the self-employment. In addition, the term includes amounts received from an individual retirement account described in section 408 of the Code or from an individual retirement annuity described in section 408 of the Code. For the purpose of this subdivision, the term 'employee' includes a volunteer worker."

Part II.

Repeal Existing Exemptions.

Sec. 2.1. G.S. 118-49 reads as rewritten:

"§ *118-49. Exemptions of pensions from attachment; rights nonassignable.*

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the pensions provided are not subject to attachment, garnishments or judgments against the fireman or rescue squad worker entitled to them, nor are any rights in the fund or the pensions or benefits ~~assignable nor are the pensions subject to any State or municipal tax.~~ assignable."

Sec. 2.2. G.S. 120-4.29 reads as rewritten:

"§ *120-4.29. Exemption from ~~taxes,~~ garnishment, attachment.*

Except for the applications of the provisions of G. S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, annuity, or retirement allowance, to the return of contributions, or to the receipt of the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, ~~are exempt from any State or municipal tax, and~~ are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as this Article specifically provides. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system or Disability Salary Continuation Plan may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary."

Sec. 2.3. G.S. 127A-40(e) is repealed.

Sec. 2.4. G.S. 128-31 reads as rewritten:

"§ *128-31. Exemptions from execution.*

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by this Article, ~~are hereby exempt from any state or municipal tax, and~~ are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system or Disability Salary Continuation Plan may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary."

Sec. 2.5. G.S. 135-9 reads as rewritten:

"§ *135-9. Exemption from ~~taxes,~~ garnishment, attachment, etc.*

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a person to a pension, or annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Chapter, and the moneys in the various funds created by this Chapter, ~~are hereby exempt from any State or municipal tax, and~~ are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Chapter specifically otherwise provided. Notwithstanding any provisions to the contrary, any overpayment of benefits to a member in a State-administered retirement system or the former Disability Salary Continuation Plan or the Disability Income Plan of North Carolina may be offset against any retirement allowance, return of contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary."

Sec. 2.6. G.S. 135-95 reads as rewritten:

"§ *135-95. Exemption from ~~taxes,~~ garnishment, attachment.*

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a member in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, ~~garnishment, and the benefits payable under~~

~~this Article are hereby exempt from any State and local government taxes.~~ and garnishment."

Sec. 2.7. G.S. 143-166.30(g) reads as rewritten:

"(g) Exemption from ~~Taxes,~~ Garnishment and Attachment. -- The right of a participant in the Supplemental Retirement Income Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, ~~garnishment, and the benefits payable under this Article are hereby exempt from any State and local government taxes,~~ and garnishment."

Sec. 2.8. G.S. 143-166.60(h) reads as rewritten:

"(h) Exemption from ~~Taxes,~~ Garnishment and Attachment. -- The right of a participant in the Separate Insurance Benefits Plan to the benefits provided under this Article is nonforfeitable and exempt from levy, sale, and ~~garnishment, and the benefits payable under this Article are exempt from any State and local government taxes,~~ garnishment."

Sec. 2.9. G.S. 143-166.85(e) is repealed.

Sec. 2.10. G.S. 147-9.4 reads as rewritten:

"§ *147-9.4. Deferred Compensation Plan.*

Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision of law relating to salaries or salary schedules of State employees, the chief executive officer of an employer, on behalf of the employer, may from time to time enter into a contract with an employee under which the employee irrevocably elects to defer receipt of a portion of his scheduled salary in the future, but only if, as a result of such contract, the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-426.24 or pursuant to some other plan established before 1 January 1983, and is not constructively received by the employee in the year in which it was earned, for State and federal income tax purposes. In addition, the income so deferred shall be invested in the manner provided in the applicable Plan; however, the employee may revoke his election to participate and may amend the amount of compensation to be deferred by signing and filing with the Board a written revocation or amendment on a form and in the manner approved by the Board. Any such revocation or amendment shall be effective prospectively only and shall cause no change in the allocation of amounts invested prior to the filing date of such revocation or amendment.

An employee who has agreed to the deferral of income pursuant to the Plan shall have the right to receive the income so deferred only in accordance with the provisions of the Plan. Funds so deferred shall not be in lieu of any amount earned by the employee before his election to defer compensation became effective. The agreement to defer income referred to herein shall be effective under such

necessary regulations and procedures as are adopted by the Board, and on forms prepared or approved by it. Notwithstanding any other provisions of law, the amount by which the salary of an employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of an employee, who elects to defer income pursuant to the North Carolina Public Employee Deferred Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment, except as provided by this ~~section, and exempt from all State and local taxation.~~ section."

Sec. 2.11. G.S. 161-50.5(e) is repealed.

Sec. 2.12. Chapter 1307 of the 1979 Session Laws and Chapter 1076 of the 1969 Session Laws are repealed.

Part III.

Retirement Benefits Amendments.

Sec. 3.1. G.S. 135-5(b10) reads as rewritten:

"(b10) Service Retirement Allowance of Members Retiring on or after July 1, ~~1988.~~ 1988, but before July 1, 1989. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
   b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years

of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b., c. and d."

Sec. 3.2. G.S. 135-5 is amended by adding a new subsection to read:

"(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b. c. and d."

Sec. 3.3. G.S. 135-5 is amended by adding a new subsection to read:

"(qq) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1989 Session of the General Assembly."

Sec. 3.4. G.S. 128-27(b10) reads as rewritten:

"(b10) Service Retirement Allowance of Members Retiring on or after July 1, ~~1988.~~ 1988, but before July 1, 1989. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
   b. Such allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
   a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service, or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty-hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
   b. Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b) and (3)."

Sec. 3.5. G.S. 128-27 is amended by adding a new section to read:

"(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3)."

Sec. 3.6. G.S. 128-27 is amended by adding a new subsection to read:

"(gg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1989 Session of the General Assembly."

Sec. 3.7. The State's employer contribution rate budgeted for the University Employees' Optional Retirement Program is increased

from eight and seventeen hundredths percent (8.17%), as contained in the Expansion Budget Appropriations Act of 1989, to eight and twenty-seven hundredths percent (8.27%), beginning September 1, 1989.

Sec. 3.8. It is the intention of the First Session of the 1989 General Assembly that the benefit accrual rates of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System be further increased as a result of this act, on or after July 1, 1990, for active and retired members and beneficiaries of the Systems upon the availability of unencumbered actuarial gains in the Retirement Systems for the years ending on or after December 31, 1988, subsequent to the application of such unencumbered actuarial gains for the provisions of G.S. 128-27(k) and G.S. 135-5(o).

Sec. 3.9. Part III of this act shall become effective July 1, 1989. The remainder of this act is effective for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 1840 **CHAPTER 793**

AN ACT TO AMEND THE LAW REGARDING THE WINSTON-SALEM FIREMEN'S FUND ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. Section 2(b) of Chapter 388, 1973 Session Laws, as rewritten by Chapter 508, 1987 Session Laws, reads as rewritten:

"(b) As of July 1, 1987, and thereafter, any person not covered under (a) above who shall have been regularly and continuously employed full time by the Fire Department of the City of Winston-Salem (hereinafter referred to as the Fire Department), including any Fire Department mechanic or electrician, who shall have attained his 18th birthday and shall not have attained his 40th birthday. Any person not covered under (a) above who was hired by the Fire Department prior to July 1, 1987, and continues to be employed by the Fire Department on such date, and who had attained his 30th birthday when hired but had not then attained his 40th birthday, may elect within 90 days following July 1, 1987, to become a member by contributing to the Association the sum of twelve dollars ($12.00) per month from his date of hire by the Fire Department, plus interest at the rate of ~~seven percent (7%)~~ eight percent (8%), applicable to any payments made on and after July 1, 1989, per annum, computed on the amount accrued as of the end of each fiscal year of the Association."

Sec. 2. Section 16 of Chapter 388, 1973 Session Laws, as rewritten by Chapter 508, 1987 Session Laws, reads as rewritten:

"Sec. 16. (a) Notwithstanding the provisions of subsection (b) immediately following, if a person who shall not be a member of the Association shall be transferred to the employment of the Fire Department from the employment of the City of Winston-Salem (hereinafter referred to as the City), the following provisions shall apply in determining whether he shall be a member of the Association following such transfer:

(1) If he shall have attained at least his 18th birthday and shall not have attained his 40th birthday on the date of such transfer, he shall automatically become a member on such date of transfer. In determining such transferred employee's number of years of continuous employment by the City, employment with the City prior to such transfer shall be taken into account only if such employee shall elect to contribute to the Association the amount of twelve dollars ($12.00) per month from the date of his hire by the City until the date of such transfer, plus interest at the rate of ~~seven percent (7%)~~ eight percent (8%), applicable to any payments made on and after July 1, 1989, per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(2) If he shall have attained at least his 40th birthday on the date of transfer, but had not attained such birthday when last employed by the City, he may elect within 90 days following such transfer to become a member. If he elects to become a member, he shall contribute to the Association the amount he would have contributed if he had become a member on the day next preceding his 40th birthday. In addition, at the option of such employee, he may further elect to contribute such additional amount as he would have contributed prior to his 40th birthday if his employment with the City had been with the Fire Department. Any such contributions shall include interest at the rate of ~~seven percent (7%)~~ eight percent (8%), applicable to any payments made on and after July 1, 1989, per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(3) If he shall have attained at least his 40th birthday when last employed by the City, he shall be ineligible to become a member following such transfer.

(4) The elections specified in subdivisions (1) and (2) hereof shall be made in writing to the Trustees within 90 days following such transfer, and shall be irrevocable when made

(subject to termination of membership upon subsequent separation from employment with the Fire Department). Any contributions (and interest) payable pursuant to such election shall be paid in cash in a lump sum at the time such election shall be filed.

(b) Notwithstanding the provisions of subsection (a) of Section 2 hereof, as soon as practicable following April 3, 1979, (but in no event more than 60 days thereafter), the Trustees gave each person who was then employed by the City of Winston-Salem as a Public Safety Officer an election to be a member or not to be a member of the Association. Each such election was to be made in accordance with procedures established by the Trustees and was irrevocable when made (subject to termination of membership upon a subsequent separation from the employment of the City, and subject to the provisions of subsection (a) of this Section 16). If a Public Safety Officer failed to file a timely election, he was deemed to have elected not to be a member. If a Public Safety Officer who was a member on the date of the election elected to discontinue membership (or shall have been deemed to have so elected), within 30 days following such date there should have been refunded to him the full amount of his prior contributions to the Association, if any, without interest. If a Public Safety Officer who failed to make contributions prior to the election date elected to be a member, he shall have within 30 days following such election paid to the Association the full amount he would have contributed if he had made required contributions during the entire period that he was eligible to be a member. Such contributions included interest at the rate of six percent (6%) per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(c) Any member whose employment by the Fire Department as a Public Safety Officer shall be terminated on or after June 27, 1981, for any reason, including transfer to another department in the employment of the City, shall be terminated immediately as a member; provided, that any member who is transferred on or after July 1, 1981, to another department of the City in a fire-related job shall not become a terminated member if the following conditions are met: (i) within 15 days following the date of such transfer he shall file with the Trustees a written election to continue as a member; and (ii) such member shall be notified in writing by the secretary of the Association on or before the date of transfer of his right to make the election. If a terminated member shall reenter employment of the Fire Department, his eligibility to become a member shall be determined at that time in accordance with Section 2 hereof, except to the extent such individual

may be entitled to elect to become a member upon a transfer of employment as provided in subsection (a) of this Section 16.

(d) In determining the number of years of continuous employment of a member, there shall be taken into account all years for which he shall make contributions in accordance with subsection (a) or (e) of this Section 16 or Section 19. For purposes of computing a member's years of continuous employment with the City, any period of unused sick leave with the Fire Department accrued by the member on the date of his retirement shall be deemed to be a period of continuous employment with the Fire Department.

(e) If any member of the Association was employed by the Fire Department as a cadet, such member's number of years of employment as a cadet may be added to the period of his continuous employment with the City if, by July 31, 1981, such member contributed to the Association an amount equal to twelve dollars ($12.00) per month for the time he was a cadet, plus interest at the rate of six percent (6%) per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(f) If a member has been employed by the City continuously for a period of 10 years and has any military service, and is not otherwise treated under Section 26 as being in the employment of the City during the period of such military service, the period of such military service shall nevertheless be added to his period of continuous employment with the City upon such member's paying to the Association an amount equal to twelve dollars ($12.00) for each month of such military service plus interest at the rate of ~~seven percent (7%)~~ eight percent (8%), applicable to any payments made on and after July 1, 1989, per annum, compounded annually. Such military service shall be limited to the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom. The member must submit evidence satisfactory to the Trustees of the military service claimed. Such election must be made within one year after the member first becomes eligible to contribute for such military service. Credit for military service under this subsection shall not be considered service creditable under another retirement system for purposes of G.S. 128-26(a).

(g) If an individual who is an active participant in the North Carolina Local Governmental Employees' Retirement System (the 'System') shall terminate service with the employer enabling the individual to participate in the System (the 'System Employer'), and shall immediately enter the employment of the Fire Department, he

may elect to have his period of service under the System considered as continuous employment with the Fire Department for purposes of this act; provided, that such election shall be permitted only if the individual was under age 40 when he entered the employment of the System Employer. This election shall be made in writing to the Trustees within 90 days of the individual's commencement of employment with the Fire Department (or, with respect to an individual who becomes employed by the Fire Department prior to July 1, 1989, this election shall be made on or before September 30, 1989). The election, if made, shall be accompanied by a cash contribution to the Association of an amount equal to twelve dollars ($12.00) per month during the period of his service under the System, plus interest at the rate of eight percent (8%) per annum, compounded annually on the amount accrued as of the end of each fiscal year of the Association. The election shall be irrevocable when made. If the election is not made in a timely fashion, the right to make the election is forfeited."

Sec. 3. Section 18 of Chapter 388, 1973 Session Laws, as rewritten by Chapter 508, 1987 Session Laws, reads as rewritten:

"Sec. 18. If at any time there shall not be sufficient assets in the retirement fund of the Association to pay fully the persons entitled to benefits provided herein, such persons shall be paid such benefits on a pro rata basis to the extent the assets of such fund will allow, as shall be determined by the Trustees; provided, that the assets of such fund determined as of the close of any fiscal year of the Association shall in no event be less than ~~one million dollars ($1,000,000)~~ one million five hundred thousand dollars ($1,500,000)."

Sec. 4. Section 19 of Chapter 388, 1973 Session Laws, as rewritten by Chapter 508, 1987 Session Laws, reads as rewritten:

"Sec. 19. Whenever any member of the Association has been employed by the City continuously for a period off at least 30 years, such member may make written application to the trustees for his normal retirement benefit, and whenever any member of the Association has been employed by the City continuously for a period of at least 25 years but not more than 30 years, such member may make written application to the Trustees for his early retirement benefit; provided, however, that such member must retire from the service of the City to receive such benefits. The normal and early retirement benefits of such member shall be a monthly pension for the remainder of his life, as provided hereinbelow. For this purpose and for the purpose of Section 20 hereof, a member shall be deemed to have been employed by the City continuously if such member shall have been employed continuously by any combination of the Fire Department or Police Department (but only such employment by the

Police Department as is described in subsection 16(b) and (c) hereof), and the transfer of a member from the employ of one of such organizations to the employ of the other such organization shall not be deemed to be a termination of employment by the City. Provided, that if a member has at least 25 years of employment with the City, but such service is not continuous solely because of a leave of absence lasting not more than a year and not described in Section 26, such member shall be deemed to have continuous employment with the City during such leave of absence; and provided further, that if a member has less than 25 years of employment with the City but the sum of his years of employment with the City plus
any leave of absence lasting not more than one year and not described in Section 26, equals or exceeds 25 years, the period of such leave shall be deemed to be continuous employment with the City if such member contributes to the Association twelve dollars ($12.00) for each month he was on such leave, plus interest at the rate of ~~seven percent (7%)~~ eight percent (8%), applicable to any payments made on and after July 1, 1989, per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

Effective beginning July 1, 1989, and ending June 30, 1990, the ~~The~~ amount of the monthly pension for each member who is entitled to receive a normal retirement benefit ~~and who retires on or after July 1, 1985, shall be one hundred eighty-five dollars ($185.00)~~ (including members who retired prior to July 1, 1989) shall be two hundred dollars ($200.00). Effective on and after July 1, 1990, the amount of the monthly pension for each member who is entitled to receive a normal retirement benefit (including members who retired prior to this date) shall be two hundred fifteen dollars ($215.00). The amount of the monthly pension for each member who is entitled to receive an early retirement benefit ~~and who retires on and after July 1, 1985,~~ as of any date shall be the product of (1) and (2), where (1) is the applicable percentage listed in the following table based on his years of continuous employment at his early retirement date, and (2) ~~is one hundred eighty-five dollars ($185.00)~~ is the amount of the payment that he would have received as a normal retirement benefit under this section as of that date:

Years of Employment at Retirement Date	Percentage of Normal Retirement Benefit
25	85%
26	88%
27	91%
28	94%
29	97%

Payment shall be subject to the provisions of Section 18 of this act. Section 16(d) governs the determinations of a member's years of continuous employment."

Sec. 5. Section 20 of Chapter 388, 1973 Session Laws, as rewritten by Chapter 508, 1987 Session Laws, reads as rewritten:

"Sec. 20. Whenever any member of the Association becomes totally and permanently unable, because of infirmity or disease affecting mind or body (whether or not induced by injury) to perform his duties for the City, which inability shall be determined by a medical examination by a physician or physicians of good standing and repute selected by the Trustees, he shall be deemed to be a disabled member. If a disabled member has been employed by the City for at least five full years prior to suffering disability, he shall be entitled to retire and receive a monthly benefit payable for the remainder of his life.

~~In the case of such a member who retires as a disabled member on or after July 1, 1985, his monthly benefit shall equal seven dollars forty cents ($7.40) times his years of service, but not to exceed one hundred eighty-five dollars ($185.00). For this purpose only, years of service shall mean the number of full years of his service in the employment of the City. Payments shall be subject to the provisions of Section 18 of this act.~~ Effective beginning July 1, 1989, and ending June 30, 1989, the monthly benefit of a member who retires as a disabled member (including a member who retired as a disabled member prior to July 1, 1989) shall equal eight dollars ($8.00) times his years of service but in no event more than two hundred dollars ($200.00) per month. Effective on and after July 1, 1990, the monthly benefit of a member (including a member who retires as a disabled member prior to this date) shall equal eight dollars and sixty cents ($8.60) times his years of service, but in no event more than two hundred fifteen dollars ($215.00) per month. For this purpose only, years of service shall mean the number of his earned years of service in the employment of the City (as determined pursuant to Section 16(d) of this act). Payments shall be subject to the provisions of Section 18 of this act.

Notwithstanding the foregoing provisions of this Section 20, in the case of a disabled member whose disability shall arise out of injuries incurred in fire safety activities, such as fire fighting, fire training and fire inspection, such monthly benefit shall in no event be less than forty dollars ($40.00) per month, whether or not such disabled member was employed by the City for at least five years prior to suffering such disability. The determination of whether such disability arises out of injuries incurred in fire safety activities shall be made by the Trustees."

Sec. 6. None of the provisions of this act shall create an additional liability for the Winston-Salem Firemen's Fund Association unless sufficient funds are available to pay fully for the liability.

Sec. 7. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 244 **CHAPTER 794**

AN ACT TO ALLOCATE FUNDS FOR NURSING EDUCATION AND TRAINING PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. Funds appropriated in Section 3 of Senate Bill 44, 1989 Session, AN ACT TO MAKE EXPANSION BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES, to the Board of Governors of The University of North Carolina in a Reserve for the Enhancement of Nursing Programs shall be allocated as provided in this act.

Sec. 2. Recruitment. (a) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of one hundred thousand dollars ($100,000) for the 1989-90 fiscal year, and the sum of one hundred thousand dollars ($100,000) for the 1990-91 fiscal year, for the Area Health Education Centers for use in developing more varied clinical training sites for nursing students. These funds shall be allocated among the schools of nursing within the community colleges and the constituent institutions of The University of North Carolina.

(b) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of fifty thousand dollars ($50,000) for the 1989-90 fiscal year, and the sum of fifty thousand dollars ($50,000) for the 1990-91 fiscal year, for the Area Health Education Centers to provide information and training programs which help retain new nursing graduates for employers of nurses.

(c) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of fifty thousand dollars ($50,000) for the 1989-90 fiscal year, and the sum of fifty thousand dollars ($50,000) for the 1990-91 fiscal year, to provide materials and training about health careers for middle-school career exploration teachers.

(d) There is allocated from the Reserve to the Department of Community Colleges the sum of two hundred ten thousand dollars

($210,000) for the 1989-90 fiscal year, and the sum of four hundred ten thousand dollars ($410,000) for the 1990-91 fiscal year. All of these funds shall be used to enhance formula funding to the nursing programs and shall be allocated to those institutions with nursing programs. All institutions receiving this funding shall, at a minimum, fund their nursing programs at this enhanced level. Any increases in regular curriculum per student funding shall also provide proportional increases in nursing programs.

(e) There is allocated from the Reserve to the North Carolina Foundation for Nursing, Inc., the sum of one hundred thousand dollars ($100,000) for the 1989-90 fiscal year, and the sum of one hundred thousand dollars ($100,000) for the 1990-91 fiscal year, to be used for covering the costs of promoting nursing as a profession. These funds may not become a part of the continuation budget.

(f) There is allocated from the Reserve to the Board of Governors of The University of North Carolina, the sum of seventy-five thousand dollars ($75,000) for the 1989-90 fiscal year, to be used for awarding competitive grants to the schools of nursing of The University of North Carolina and of the community colleges for innovative efforts to recruit various groups of students into the nursing schools. The Board of Governors shall create an advisory group composed of the Deans of the schools of nursing from The University of North Carolina and the community college system, selected administrators and officers of The University of North Carolina and the community college system, and representatives of the nursing profession. The advisory group shall set criteria for grant awards and shall make recommendations for the selection of grant recipients based on grant applications received. Each grant recipient shall submit an evaluation of its efforts to the Legislative Commission on Nursing, the Board of Governors of The University of North Carolina, and the Department of Community Colleges.

(g) There is allocated from the Reserve to The University of North Carolina Board of Governors, the sum of seventy-five thousand dollars ($75,000) for the 1989-90 fiscal year, and the sum of one hundred thousand dollars ($100,000) for the 1990-91 fiscal year, to be used to continue and to expand its pilot efforts in nursing recruitment through the Area Health Education Centers Program.

(h) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of seventy-five thousand dollars ($75,000) for the 1989-90 fiscal year, and the sum of seventy-five thousand dollars ($75,000) for the 1990-91 fiscal year, for the Area Health Education Centers Program for the purpose of increasing the availability of refresher courses for nurses. The Area Health Education Centers Program may use the funds as

incentives to nursing schools which provide courses to nurses who are subsequently relicensed by the North Carolina Board of Nursing or who reenter the practice of nursing.

Sec. 2.1. Retention. (a) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of seventy-five thousand dollars ($75,000) for the 1989-90 fiscal year, and the sum of seventy-five thousand dollars ($75,000) for the 1990-91 fiscal year, to be used for the awarding of competitive grants to employers of nurses for developing innovative pilot efforts to retain nurses in patient care. The Board of Governors shall create an advisory group composed of representatives of the following: the North Carolina Hospital Association, the North Carolina Health Care Facilities Association, the North Carolina Association for Home Care, private industry, and the nursing profession. The advisory group shall set criteria for the solicitation of grant proposals and for the award of grant funds, and shall make recommendations for the selection of grant recipients based on grant applications received. All grants shall require that an evaluation of each grant recipient's efforts be conducted and submitted to the Legislative Commission on Nursing within three years of receipt of grant funds, and that the results of the evaluation be made available for publication. Funds which are unspent at the end of the fiscal year may not revert to the General Fund but shall remain available for the purposes stated herein.

(b) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of one hundred fifty thousand dollars ($150,000) for the 1989-90 fiscal year, and the sum of one hundred fifty thousand dollars ($150,000) for the 1990-91 fiscal year, to be used to continue and to expand pilot efforts to retain nurses in the nursing profession through the Area Health Education Centers Program.

(c) There is allocated from the Reserve to the Legislative Commission on Nursing the sum of seventy-five thousand dollars ($75,000) for the 1989-90 fiscal year, to be used to plan for a Center for Excellence in Nursing. The Legislative Commission on Nursing may contract with other groups for this planning effort. In contracting with other groups for the planning effort, the Legislative Commission on Nursing shall comply with the provisions of G.S. 120-32.02.

(d) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of one hundred thousand dollars ($100,000) for the 1989-90 fiscal year, for the Area Health Education Centers Program to conduct two pilot institute programs for nurses involved in direct patient care. The Director of the Area Health Education Centers Program shall provide an evaluation of the pilot institutes to the Legislative Commission on

Nursing not later than May 1, 1990. The evaluation shall include the institutes' effect on retaining nurses in the nursing profession.

Sec. 3. Education. (a) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of one hundred fifty thousand dollars ($150,000) for the 1989-90 fiscal year, and the sum of one hundred seventy-five thousand dollars ($175,000) for the 1990-91 fiscal year, for the Area Health Education Centers Program to use for targeting recruitment efforts for nursing schools, for improvement of on-campus nursing programs for working registered nurses, and for the expansion of off-campus nursing degree programs. The Area Health Education Centers Program shall report on the use of these funds to the General Assembly and the Legislative Commission on Nursing not later than March 1, 1990.

(b) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of eighty-five thousand dollars ($85,000) for the 1989-90 fiscal year, and the sum of eighty-five thousand dollars ($85,000) for the 1990-91 fiscal year, to be used for funding need-based scholarship loans for nursing students. Of the funds appropriated to the Board of Governors, eighteen thousand dollars ($18,000) shall be allocated for each fiscal year to the State Education Assistance Authority for allocation to private colleges in North Carolina which have nursing programs. Funds already appropriated to the Board of Governors for allocation to constituent institutions with nursing programs for emergency financial assistance to nursing students, shall be reallocated for need-based scholarship loans for nursing students. These funds shall be administered in accordance with Article 9D of Chapter 90 of the General Statutes.

(c) There is allocated from the Reserve to the State Board of Community Colleges the sum of two hundred sixty-five thousand dollars ($265,000) for the 1989-90 fiscal year, and the sum of two hundred sixty-five thousand dollars ($265,000) for the 1990-91 fiscal year, to be used for funding need-based scholarship loans for nursing students. The four hundred ten thousand dollars ($410,000) already appropriated to the State Board of Community Colleges for allocation to the Department of Community Colleges for emergency financial assistance to nursing students shall be reallocated for need-based scholarship loans for nursing students. These funds shall be administered in accordance with the provisions of Article 9D of Chapter 90 of the General Statutes.

Sec. 4. Salary. (a) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of fifty thousand dollars ($50,000) for the 1989-90 fiscal year, and the sum of fifty thousand dollars ($50,000) for the 1990-91 fiscal year, to

be used for funding demonstration grants for employers of nurses. The demonstration grants shall be competitive and shall be designed to experiment with salary programs for nurses within professional practice models. These funds may not be used to pay nursing salaries. The Board of Governors shall create an advisory group composed of representatives of the following: the North Carolina Hospital Association, the North Carolina Health Care Facilities Association, the North Carolina Association for Home Care, private industry, and the nursing profession. The advisory group shall set criteria for grant awards, and shall make recommendations for the selection of grant recipients based on grant applications received. Grant criteria shall include the requirement that there be an evaluation and reporting of the results of the grant project to the Legislative Commission on Nursing, the Board of Governors of The University of North Carolina, the North Carolina Hospital Association, and the North Carolina Health Care Facilities Association.

(b) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of thirty thousand dollars ($30,000) for the 1989-90 fiscal year, and the sum of thirty thousand dollars ($30,000) for the 1990-91 fiscal year, to be used to fund demonstration grants for employers of nurses. The grants shall be competitive and shall be designed to stimulate innovative approaches to providing child care and flexible fringe benefit plans for nurses. These funds may not be used to pay nursing salaries. The Board of Governors shall create an advisory group composed of representatives of the following: the North Carolina Hospital Association, the North Carolina Health Care Facilities Association, the North Carolina Association for Home Care, private industry, and the nursing profession. The advisory group shall set criteria for the award of grants and shall make recommendations for the selection of grant recipients based on grant applications received. Grant criteria shall include the requirement that there be an evaluation and reporting of the results of the grant project to the Legislative Commission on Nursing, the Board of Governors of The University of North Carolina, the North Carolina Hospital Association, and the North Carolina Health Care Facilities Association.

(c) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of one hundred thousand dollars ($100,000) for the 1989-90 fiscal year, to be used to provide competitive demonstration grants to health care facilities for the improvement of nursing support services and productivity efforts, which may include computerization efforts. The Board of Governors shall create an advisory group, the membership of which shall include representatives of the following: the North

Carolina Hospital Association, the North Carolina Health Facilities Association, the North Carolina Association for Home Care, private industry, and the nursing profession. The advisory group shall set criteria for the award of grants, including the potential for the proposed project's replication at other facilities, and shall make recommendations for the selection of grant recipients based on grant applications received. Awards criteria shall include the requirement that an evaluation report on the results of the project be conducted and submitted to the Legislative Commission on Nursing, the Board of Governors of The University of North Carolina, and other entities designated by the Board of Governors. Funds which are unspent at the end of each fiscal year may not revert to the General Fund but shall remain available for the purposes designated herein.

(d) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of fifty thousand dollars ($50,000) for the 1989-90 fiscal year to be used for incentive planning grants for the development of integrated pay, career advancement, and education plans for nurses. The Board of Governors shall create an advisory group composed of representatives of the following: the North Carolina Hospital Association, the North Carolina Health Care Facilities Association, the North Carolina Association for Home Care, private industry, and the nursing profession. The advisory group shall set criteria for grant awards and shall make recommendations for the selection of grant recipients based on grant applications received. Grant awards shall be designed to stimulate plans which are applicable to various types and sizes of health care institutions, and shall require that evaluations of the project be conducted and reported to the Legislative Commission on Nursing and other entities designated by the Board of Governors.

Sec. 5. (a) There is allocated from the Reserve to the General Assembly the sum of seventy-five thousand dollars ($75,000) for the 1989-90 fiscal year to be used for the operations of the Legislative Commission on Nursing.

(b) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of one million five hundred fifty thousand dollars ($1,550,000) for the 1990-91 fiscal year to provide scholarships under the Nursing Scholars Program established in G.S. 90-171.61 and administered by the State Educational Assistance Authority.

(c) There is allocated from the Reserve to the Board of Governors of The University of North Carolina the sum of seventy-five thousand dollars ($75,000) for the 1989-90 fiscal year, and the sum of seventy-five thousand dollars ($75,000) for the 1990-91 fiscal year, to be used to enable the State Education Assistance Authority to provide staff and

administrative support in carrying out the provisions of Article 9C of Chapter 90 of the General Statutes.

Sec. 6. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 1124 **CHAPTER 795**

AN ACT TO APPROPRIATE FUNDS TO THE ADMINISTRATIVE OFFICE OF THE COURTS, TO MAKE IMPROVEMENTS TO THE JUDICIAL BRANCH OF GOVERNMENT, AND TO ADD ADDITIONAL COURT PERSONNEL.

The General Assembly of North Carolina enacts:

JUROR AND WITNESS FEES

Section 1. There is appropriated from the General Fund to the Judicial Department $400,000 for fiscal year 1989-90 and $400,000 for fiscal year 1990-91 to be used to pay jurors and witnesses called before either the superior or district courts.

SUPREME COURT PERSONNEL

Sec. 2. There is appropriated from the General Fund to the Judicial Department $40,580 for fiscal year 1989-90 and $69,074 for fiscal year 1990-91 for new support personnel in the supreme court reporter's office and library.

COURT OF APPEALS PERSONNEL

Sec. 3. There is appropriated from the General Fund to the Judicial Department $35,454 for fiscal year 1989-90 and $39,501 for fiscal year 1990-91 for one court of appeals staff attorney.

NEW SUPERIOR COURT PERSONNEL

Sec. 4. There is appropriated from the General Fund to the Judicial Department $92,260 for fiscal year 1989-90 to be used for two official court reporters and two administrative secretaries to superior court judges. Further, there is appropriated from the General Fund to the Judicial Department $626,236 for fiscal year 1990-91 to be allocated for the following purposes:

(1) To continue the four positions funded in fiscal year 1989-90 - $103,056;

(2) To establish six resident superior court judgeships - $377,136;

(3) To create six official court reporter positions - $98,910;

(4) To establish two administrative secretaries to superior court judges - $47,134.

NEW DISTRICT COURT PERSONNEL

Sec. 5. (a) There is appropriated from the General Fund to the Judicial Department $558,367 for fiscal year 1989-90 to be allocated for the following purposes:

(1) One new district court judgeship - $87,339;
(2) Four official court reporters - $105,068;
(3) Ten magistrates - $179,980;
(4) Ten secretaries for district courts now without secretarial assistance - $185,980.

(b) There is appropriated from the General Fund to the Judicial Department $1,588,914 for fiscal year 1990-91 to be allocated for the following purposes:

(1) To continue the positions established in fiscal year 1989-90 in subsection (a) of this section - $606,983;
(2) To establish 15 new district court judgeships - $820,621;
(3) To establish five new magistrate positions - $107,280;
(4) To establish two case management assistants to trial court administrators - $54,030.

NEW JUVENILE SERVICES PERSONNEL

Sec. 6. There is appropriated from the General Fund to the Judicial Department $616,651 for fiscal year 1989-90 and $867,239 for fiscal year 1990-91 for new personnel in the Juvenile Services Division of the Administrative Office of the Courts, and for contract services to provide for intensive juvenile supervision.

NEW DEPUTY CLERKS OF SUPERIOR COURT

Sec. 7. There is appropriated from the General Fund to the Judicial Department $586,008 for fiscal year 1989-90 and $1,032,282 for fiscal year 1990-91 for 36 new deputy clerks of superior court in the 1989-90 fiscal year and an additional 18 new deputy clerks in the 1990-91 fiscal year.

NEW PUBLIC DEFENDER PERSONNEL

Sec. 8. (a) There is appropriated from the General Fund to the Judicial Department $37,130 for fiscal year 1989-90 for two new personnel in public defender offices.

(b) There is appropriated from the General Fund to the Judicial Department $96,521 for fiscal year 1990-91 for continuation of the two positions established for fiscal year 1989-90 and for two additional positions.

NEW PERSONNEL FOR SPECIAL COUNSEL

Sec. 9. There is appropriated from the General Fund to the Judicial Department $23,957 for fiscal year 1989-90 and $27,854 for fiscal year 1990-91 for one assistant to the special counsel in the 10th judicial district.

NEW DISTRICT ATTORNEY PERSONNEL

Sec. 10. (a) There is appropriated from the General Fund to the Judicial Department $1,296,436 for fiscal year 1989-90 to be allocated for the following purposes:

(1) Nineteen new assistant district attorneys - $831,136;

(2) To establish 14 district attorney's secretaries - $247,450;

(3) To establish 10 new victim/witness assistants - $217,850.

(b) There is appropriated from the General Fund to the Judicial Department $2,073,670 for fiscal year 1990-91 to be allocated for the following purposes:

(1) To continue the positions established in fiscal year 1989-90 in subsection (a) of this section - $1,522,010;

(2) To establish 8 new assistant district attorney positions - $419,864;

(3) To establish 2 new victim/witness assistants - $26,856;

(4) To establish five district attorney's secretaries - $104,940.

NEW OR UPGRADED GUARDIAN AD LITEM PROGRAM POSITIONS

Sec. 11. (a) There is appropriated from the General Fund to the Judicial Department for transfer to the Indigent Persons' Attorney Fee Fund, Guardian *Ad Litem* Program, $314,902 for fiscal year 1989-90 for the establishment or upgrade of 32 Guardian *Ad Litem* Program staff positions.

(b) There is appropriated from the General Fund to the Judicial Department for transfer to the Indigent Persons' Attorney Fee Fund, Guardian *Ad Litem* Program, $494,758 for fiscal year 1990-91 to continue the 32 positions that were established or upgraded in fiscal year 1989-90 and to create four new Guardian *Ad Litem* Program staff positions.

NEW ADMINISTRATIVE OFFICE OF THE COURTS GENERAL ADMINISTRATION POSITIONS PERSONNEL

Sec. 12. (a) There is appropriated from the General Fund to the Judicial Department $205,948 for fiscal year 1989-90 to establish a total of seven staff positions within the general administration section of the Administrative Office of the Courts.

(b) There is appropriated from the General Fund to the Judicial Department $315,612 for fiscal year 1990-91 to provide for the continuation of the seven positions established in the Administrative Office of the Courts in fiscal year 1989-90 and to provide for the establishment of three new staff positions effective July 1, 1990.

NEW ADMINISTRATIVE OFFICE OF THE COURTS WAREHOUSE AND PRINTING SERVICE PERSONNEL

Sec. 13. There is appropriated from the General Fund to the Judicial Department $30,954 for fiscal year 1989-90 and $55,749 for fiscal year 1990-91 to establish two new positions within the

warehouse and print shop of the Administrative Office of the Courts for the 1989-90 fiscal year and one additional position for the 1990-91 fiscal year.

COURT INFORMATION SYSTEM EXPANSION

Sec. 14. (a) There is appropriated from the General Fund to the Judicial Department $5,293,377 for the creation of 13 new staff positions within the information services division of the Administrative Office of the Courts, the upgrade of the central mainframe computer maintained by the information services section, and the expansion for the court information system.

(b) There is appropriated from the General Fund to the Judicial Department $1,933,127 for fiscal year 1990-91 to continue the 13 positions established in fiscal year 1989-90, to establish six additional positions in the information services division of the Administrative Office of the Courts, and to continue the further expansion of the court information system.

ESTABLISH STATEWIDE CUSTODY AND VISITATION MEDIATION PROGRAMS

Sec. 15. (a) Chapter 7A of the General Statutes is amended by adding the following new Article:

"ARTICLE 39A.

"Custody and Visitation Mediation Program.

"§ *7A-494. Custody and Visitation Mediation Program established.*

(a) The Administrative Office of the Courts shall establish a Custody and Visitation Mediation Program to provide statewide and uniform services in accordance with G.S. 50-13.1 in cases involving unresolved issues about the custody or visitation of minor children. The Director of the Administrative Office of the Courts shall appoint such AOC staff support required for planning, organizing, and administering such program on a statewide basis.

The purposes of the Custody and Visitation Mediation Program shall be to provide the services of skilled mediators to further the goals expressed in G.S. 50-13.1(b).

(b) Beginning on July 1, 1989, the Administrative Office of the Courts shall establish in phases a statewide custody mediation program comprised of local district programs to be established in all judicial districts of the State. Each local district program shall consist of: a qualified mediator or mediators to provide mediation services; and such clerical staff as the Administrative Office of the Courts in consultation with the local district program deems necessary. Such personnel, to be employed by the Chief District Court Judge of the district, may serve as full-time or part-time State employees or, in the alternative, such activities may be provided on a contractual basis when determined appropriate by the Administrative Office of the

Courts. The Administrative Office of the Courts may authorize all or part of a program in one judicial district to be operated in conjunction with that of another district or districts. The Director of the Administrative Office of the Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district; such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate rules and regulations necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of mediation programs under this Article shall be administered by the Administrative Office of the Courts.

(c) For a person to qualify to provide mediation services under this Article, that person shall show that he or she:

(1) Has at minimum a master's degree in psychology, social work, family counselling, or a comparable human relations discipline; and

(2) Has at least 40 hours of training in mediation techniques by a qualified instructor of mediation as determined by the Administrative Office of the Courts; and

(3) Has had professional training and experience relating to child development, family dynamics, or comparable areas; and

(4) Meets such other criteria as may be specified by the Administrative Office of the Courts.

"§ *7A-495. Implementation and administration.*

(a) Local District Program.--The Administrative Office of the Courts shall, in cooperation with each Chief District Court Judge and other district personnel, implement and administer the program mandated by this Article.

(b) Advisory Committee Established.--The Director of the Administrative Office of the Courts shall appoint a Custody Mediation Advisory Committee consisting of at least five members to advise the Custody Mediation Program. The members of the Advisory Committee shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions generally."

(b) G.S. 50-13.1 reads as rewritten:

"§ *50-13.1. Action or proceeding for custody of minor child.*

(a) Any parent, relative, or other person, agency, organization, or institution claiming the right to custody of or visitation with a minor child may institute an action or proceeding for custody of or visitation with such child, as hereinafter provided. Unless a contrary intent is

clear, the word 'custody' shall be deemed to include custody or visitation or both.

(b) Whenever it appears to the court, from the pleadings or otherwise, that an action involves a contested issue as to the custody or visitation of a minor child, the matter, where there is a program established pursuant to G.S. 7A-494, shall be set for mediation of the unresolved issues as to custody and visitation before or concurrent with the setting of the matter for hearing unless the court waives mediation pursuant to subsection (c). Issues that arise in motions for contempt or for modifications as well as in other pleadings shall be set for mediation unless mediation is waived by the court. Alimony, child support, and other economic issues may not be referred for mediation pursuant to this section. The purposes of mediation under this section include the pursuit of the following goals:

(1) To reduce any acrimony that exists between the parties to a dispute involving custody or visitation of a minor child;

(2) The development of custody and visitation agreements that are in the child's best interest;

(3) To provide the parties with informed choices and, where possible, to give the parties the responsibility for making decisions about child custody and visitation;

(4) To provide a structured, confidential, nonadversarial setting that will facilitate the cooperative resolution of custody and visitation disputes and minimize the stress and anxiety to which the parties, and especially the child, are subjected; and

(5) To reduce the relitigation of custody and visitation disputes.

(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or spouse abuse; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court shall be considered good cause.

(d) Either party may move to have the mediation proceedings dismissed and the action heard in court due to the mediator's bias, undue familiarity with a party, or other prejudicial ground.

(e) Mediation proceeding shall be held in private and shall be confidential. Except as provided in this Article, all verbal or written communications from either or both parties to the mediator or between

the parties in the presence of the mediator made in a proceeding pursuant to this section are absolutely privileged and inadmissible in court. The mediator may assess the needs and interests of the child, and may interview the child or others who are not parties to the proceedings when he or she thinks appropriate.

(f) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, there is no privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of G.S. 7A-543 or G.S. 108A-102.

(g) Any agreement reached by the parties as a result of the mediation shall be reduced to writing, signed by each party, and submitted to the court as soon as practicable. Unless the court finds good reason not to, it shall incorporate the agreement in a court order and it shall become enforceable as a court order. If some or all of the issues as to custody or visitation are not resolved by mediation, the mediator shall report that fact to the court.

(h) If an agreement that results from mediation and is incorporated into a court order is referred to as a 'parenting agreement' or called by some similar name, it shall nevertheless be deemed to be a custody order or child custody determination for purposes of Chapter 50A of the General Statutes, G.S. 14-320.1, G.S. 110-139.1, or other places where those terms appear."

(c) Programs in judicial districts 26 and 27A shall be established as of July 1, 1989, and programs in additional judicial districts shall be established by the Administrative Office of the Courts as provided in G.S. 7A-494(b).

(d) Funds in the amount of $140,000 for the 1989-90 fiscal year and $212,000 for the 1990-91 fiscal year are appropriated from the General Fund to the Judicial Department to achieve the purposes of this section.

NONBINDING ARBITRATION PROGRAM

Sec. 16. There is appropriated from the General Fund to the Judicial Department $189,118 for fiscal year 1989-90 and $350,402 for fiscal year 1990-91 to provide for the development of nonbinding arbitration programs in judicial districts 3, 14, and 29, and programs in additional judicial districts shall be established by the Administrative Office of the Courts as provided in G.S. 7A-37.1.

APPELLATE DIVISION LIBRARY FUNDS

Sec. 17. There is appropriated from the General Fund to the Judicial Department $117,617 for fiscal year 1989-90 and $158,542

for fiscal year 1990-91 to provide for the adequate maintenance and upkeep of libraries within the Appellate Division of the General Court of Justice.

INCREASED JUDICIAL DEPARTMENT OPERATING EXPENSE REQUIREMENTS

Sec. 18. From the funds appropriated to the Judicial Department for the 1989-90 fiscal year, the Administrative Office of the Courts may use up to $898,828 to meet the 1988-89 fiscal year deficit for juror and witness fees and to meet additional operating expenses for the 1989-90 fiscal year in the area of supplies, office materials, postage, and legal reference supplementation and upkeep.

EXPANSION OF DISPUTE SETTLEMENT CENTERS

Sec. 19. There is appropriated from the General Fund to the Judicial Department $71,990 for fiscal year 1989-90 and $81,490 for fiscal year 1990-91 to provide for the expansion of dispute settlement centers in Orange, Buncombe, Durham, Guilford, Henderson, Iredell, Forsyth, Alamance, and Wayne Counties.

ADDITIONAL DEPUTY CLERKS OF SUPERIOR COURT

Sec. 20. In addition to all other funds specifically appropriated or otherwise available for new part-time or full-time permanent deputy clerks of superior court, from funds appropriated to the Judicial Department in the current operating budget for the 1989-91 biennium in line item 1260-1160 (Office-Clerk of Superior Court/EPA Salaries-Temporary), the Administrative Office of the Courts may use in each fiscal year up to $670,000 to allocate among the counties of the State, pursuant to the formula authorized by Section 9 of Chapter 881 of the 1983 Session Laws or any law amending the same, additional new permanent full-time or part-time deputy clerks of superior court.

ADDITIONAL ASSISTANT PUBLIC DEFENDERS

Sec. 21. From the funds appropriated to the Indigent Persons Attorney Fee Fund in the Judicial Department for the 1989-91 biennium, the Administrative Office of the Courts may use up to $218,055 in the 1989-90 fiscal year and $260,670 in the 1990-91 fiscal year for salaries, benefits, and related expenses of five new assistant public defender positions, and may use up to an additional $261,615 in the 1990-91 fiscal year for salaries, benefits, and related expenses of five additional new public defender positions.

ADD ADDITIONAL SUPERIOR COURT JUDGES

Sec. 22. (a) Effective January 1, 1991, G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set

forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
	3A	Pitt	~~1~~ 2
	3B	Carteret, Craven, Pamlico	1
	4A	Duplin, Jones, Sampson	1
	4B	Onslow	1
	5	New Hanover, Pender	~~2~~ 3
	6A	Halifax	1
	6B	Bertie, Hertford, Northampton	1
	7A	Nash	1
	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
	8A	Lenoir and Greene	1
	8B	Wayne	1
Second	9	Franklin, Granville, Person, Vance, Warren	2
	10A	(part of Wake, see subsection (b))	1
	10B	(part of Wake, see subsection (b))	2
	10C	(part of Wake, see subsection (b))	1
	10D	(part of Wake,	1

		see subsection (b))	
	11	Harnett, Johnston, Lee	~~1~~ 2
	12A	(part of Cumberland, see subsection (b))	1
	12B	(part of Cumberland, see subsection (b))	1
	12C	(part of Cumberland, see subsection (b))	2
	13	Bladen, Brunswick, Columbus	~~1~~ 2
	14A	(part of Durham, see subsection (b))	1
	14B	(part of Durham, see subsection (b))	3
	15A	Alamance	1
	15B	Orange, Chatham	1
	16A	Scotland, Hoke	1
	16B	Robeson	2
Third	17A	Caswell, Rockingham	~~1~~ 2
	17B	Stokes, Surry	1
	18A	(part of Guilford, see subsection (b))	1
	18B	(part of Guilford, see subsection (b))	1
	18C	(part of Guilford, see subsection (b))	1
	18D	(part of Guilford, see subsection (b))	1
	18E	(part of Guilford, see subsection (b))	1
	19A	Cabarrus	1
	19B	Montgomery, Randolph	1
	19C	Rowan	1
	20A	Anson, Moore, Richmond	~~1~~ 2
	20B	Stanly, Union	1
	21A	(part of Forsyth, see subsection (b))	1
	21B	(part of Forsyth, see subsection (b))	1
	21C	(part of Forsyth, see subsection (b))	1

	21D	(part of Forsyth, see subsection (b))	1
	22	Alexander, Davidson, Davie, Iredell	2
	23	Alleghany, Ashe, Wilkes, Yadkin	1
Fourth	24	Avery, Madison, Mitchell, Watauga, Yancey	1
	25A	Burke, Caldwell	~~1~~ 2
	25B	Catawba	1
	26A	(part of Mecklenburg, see subsection (b))	2
	26B	(part of Mecklenburg, see subsection (b))	2
	26C	(part of Mecklenburg, see subsection (b))	2
	27A	Gaston	2
	27B	Cleveland, Lincoln	1
	28	Buncombe	2
	29	Henderson, McDowell, Polk, Rutherford, Transylvania	~~1~~ 2
	30A	Cherokee, Clay, Graham, Macon, Swain	1
	30B	Haywood, Jackson	1."

(b) The additional judgeships authorized by subsection (a) of this section are established effective January 1, 1991. To maintain the policy of having all superior court judges for the same superior court district serve concurrent terms, the initial terms for the additional judgeships in superior court districts:

(1) 3A and 20A shall be January 1, 1985 to December 31, 1992;

(2) 5, 13, and 25A shall be January 1, 1987 to December 31, 1994;

(3) 11, 17A and 29 shall be January 1, 1991 to December 31, 1998.

At the primary and general election in 1990 candidates shall be elected to serve a full term in superior court districts 11, 17A and 29, and to serve the remainder of the unexpired terms that will exist as of January 1, 1991, in superior court districts 3A, 5, 13, 20A and 25A.

ADD ADDITIONAL DISTRICT COURT JUDGES/MAGISTRATE FOR DISTRICTS 15A AND 15B/SPLIT DISTRICT COURT DISTRICTS 6 AND 19A

Sec. 23. (a) Effective September 1, 1989, G.S. 7A-133 reads as rewritten:

"*§ 7A-133. Numbers of judges by districts; numbers of magistrates and additional seats of court, by counties.*

Each district court district shall have the numbers of judges and each county within the district shall have the numbers of magistrates and additional seats of court, as set forth in the following table:

District	Judges	County	Magistrates Min.	Magistrates Max.	Additional Seats of Court
1	3	Camden	1	2	
		Chowan	2	3	
		Currituck	1	2	
		Dare	3	5	
		Gates	2	3	
		Pasquotank	3	4	
		Perquimans	2	3	
2	3	Martin	5	8	
		Beaufort	4	5	
		Tyrrell	1	3	
		Hyde	2	4	
		Washington	3	4	
3	7	Craven	7	10	Havelock
		Pitt	10	12	Farmville, Ayden
		Pamlico	2	3	
		Carteret	5	8	
4	5	Sampson	6	8	
		Duplin	9	11	
		Jones	2	3	
		Onslow	8	11	
5	5	New Hanover	6	~~10~~ 11	
		Pender	4	6	
6	3	Northampton	5	6	
		Halifax	9	14	Roanoke Rapids, Scotland Neck
		Bertie	4	5	
		Hertford	5	6	
7	5	Nash	7	10	Rocky Mount

		Edgecombe	4	6	Rocky Mount
		Wilson	4	6	
8	5	Wayne	5	8	Mount Olive
		Greene	2	4	
		Lenoir	4	7	La Grange
9	4	Person	3	4	
		Granville	3	7	
		Vance	3	5	
		Warren	3	4	
		Franklin	3	6	
10	10	Wake	12	17	Apex, Wendell, Fuquay-Varina, Wake Forest
11	5	Harnett	7	11	Dunn
		Johnston	10	12	Benson, Clayton and Selma
		Lee	4	6	
12	5	Cumberland	10	17	
13	4	Bladen	4	6	
		Brunswick	4	7	
		Columbus	6	8	Tabor City
14	5	Durham	8	12	
15A	3	Alamance	7	~~9~~ 10	Burlington
15B	3	Orange	4	~~8~~ 9	Chapel Hill
		Chatham	3	6	Siler City
16A	2	Scotland	3	5	
		Hoke	4	5	
16B	5	Robeson	~~8~~	16	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
17A	3	Caswell	2	5	
		Rockingham	4	9	Reidsville, Eden, Madison
17B	2	Stokes	2	5	
		Surry	5	8	Mt. Airy
18	9	Guilford	20	26	High Point
19A	~~4~~ 2	Cabarrus	5	9	Kannapolis
		~~Rowan~~	~~5~~	~~10~~	
19B	3	Montgomery	2	4	

		Randolph	5	8	Liberty
19C	2	Rowan	5	10	
20	5	Stanly	5	6	
		Union	4	6	
		Anson	4	5	
		Richmond	5	6	Hamlet
		Moore	5	8	Southern Pines
21	7	Forsyth	3	15	Kernersville
22	5	Alexander	2	3	
		Davidson	7	10	Thomasville
		Davie	2	3	
		Iredell	4	8	Mooresville
23	3	Alleghany	1	2	
		Ashe	3	4	
		Wilkes	4	6	
		Yadkin	3	5	
24	3	Avery	3	4	
		Madison	4	5	
		Mitchell	3	4	
		Watauga	4	6	
		Yancey	2	4	
25	6	Burke	4	7	
		Caldwell	4	7	
		Catawba	6	9	Hickory
26	12	Mecklenburg	15	26	
27A	5	Gaston	11	20	
27B	3	Cleveland	5	8	
		Lincoln	4	6	
28	4	Buncombe	6	15	
29	4	Henderson	4	6	
		McDowell	3	4	
		Polk	3	4	
		Rutherford	6	8	
		Transylvania	2	4	
30	3	Cherokee	3	4	
		Clay	1	2	
		Graham	2	3	
		Haywood	5	7	Canton
		Jackson	3	4	
		Macon	3	4	
		Swain	2	3."	

(b) Effective September 1, 1989, the district court judgeships held on February 1, 1989, by Clarence H. Horton, Jr., and Adam C.

Grant, Jr., or their successors, shall be allocated to district court district 19A. Effective September 1, 1989, the district court judgeships held on February 1, 1989, by Frank M. Montgomery and Robert M. Davis, Sr., or their successors, shall be allocated to district court district 19C.

(c) Of the funds appropriated to the Judicial Department in Chapter 500 of the 1989 Session Laws, $3,924 for the 1989-90 fiscal year and $5,232 for the 1990-91 fiscal year may be used to implement the provisions of subsections (a) and (b) of this section. In addition to the funds appropriated to the Judicial Department for the 1989-91 biennium to operate the present District Court District 19A, $73,204 of the funds appropriated to the Judicial Department for the 1989-90 fiscal year shall be used to implement the provisions of subsections (a) and (b) of this section. There is appropriated to the Judicial Department for the 1990-91 fiscal year $83,631 to implement the provisions of subsections (a) and (b) of this section.

(c1) G.S. 7A-293 reads as rewritten:

"*§ 7A-293. Special authority of a magistrate assigned to a municipality located in more than one county of a district court district.*

A magistrate assigned to an incorporated municipality, the boundaries of which lie in more than one county of a district court district, may, in criminal matters, exercise the powers granted by G.S. 7A-273 as if the corporate limits plus the territory embraced within a distance of one mile in all directions therefrom were located wholly within the magistrate's county of residence. Appeals from a magistrate exercising the authority granted by this section shall be taken in the district court in the county in which the offense was committed. A magistrate exercising the special authority granted by this section shall transmit all records, reports, and monies collected to the clerk of the superior court of the county in which the offense was committed. In addition, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in two district court districts, the magistrate may exercise the powers described in this section as if both counties were in the same district court district, if the clerks of superior court and the chief district court judges serving both districts in which the municipality is located agree in writing that the exercise of this special authority would promote the administration of justice in the municipality and in both districts."

(c2) G.S. 7A-199(c) reads as rewritten:

"(c) A district court judge sitting at a seat of court described in this section may, in criminal cases, conduct preliminary hearings and try misdemeanors arising within the corporate limits of the municipality plus the territory embraced within a distance of one mile in all directions therefrom.

If the corporate limits of the municipality extend into two counties, each of which is in a separate district court district, a district court judge assigned to sit at the seat of court has the same authority over criminal cases arising in the municipality and the territory embraced within a distance of one mile in all directions that he would have if the corporate limits of the municipality were solely located in a single district court district. Judges assigned to sit in such a municipality shall be assigned by the chief district court judge serving the district in which a majority of the voters of the municipality reside, but offenses arising in the portion of the municipality in which the minority of the voters reside shall not be disposed of in the municipality unless the chief district court judge for that district consents in writing to the disposition of criminal cases in the municipality."

(d) Effective December 1, 1989, G.S. 7A-133 as rewritten by subsection (a) of this section reads as rewritten:

"*§ 7A-133. Numbers of judges by districts; numbers of magistrates and additional seats of court, by counties.*

Each district court district shall have the numbers of judges and each county within the district shall have the numbers of magistrates and additional seats of court, as set forth in the following table:

District	Judges	County	Magistrates Min.	Magistrates Max.	Additional Seats of Court
1	3	Camden	1	2	
		Chowan	2	3	
		Currituck	1	2	
		Dare	3	5	
		Gates	2	3	
		Pasquotank	3	4	
		Perquimans	2	3	
2	3	Martin	5	8	
		Beaufort	4	5	
		Tyrrell	1	3	
		Hyde	2	4	
		Washington	3	4	
3	7	Craven	7	10	Havelock
		Pitt	10	12	Farmville, Ayden
		Pamlico	2	3	
		Carteret	5	8	
4	5	Sampson	6	8	
		Duplin	9	11	

		Jones	2	3	
		Onslow	8	11	
5	5	New Hanover	6	11	
		Pender	4	6	
~~6~~	~~3~~	~~Northampton~~	~~5~~	~~6~~	
		~~Halifax~~	~~9~~	~~14~~	~~Roanoke Rapids, Scotland Neck~~
		~~Bertie~~	~~4~~	~~5~~	
		~~Hertford~~	~~5~~	~~6~~	
6A	2	Halifax	9	14	Roanoke Rapids, Scotland Neck
6B	2	Northampton	5	6	
		Bertie	4	5	
		Hertford	5	6	
7	5	Nash	7	10	Rocky Mount
		Edgecombe	4	6	Rocky Mount
		Wilson	4	6	
8	5	Wayne	5	8	Mount Olive
		Greene	2	4	
		Lenoir	4	7	La Grange
9	4	Person	3	4	
		Granville	3	7	
		Vance	3	5	
		Warren	3	4	
		Franklin	3	6	
10	10	Wake	12	17	Apex, Wendell, Fuquay-Varina, Wake Forest
11	5	Harnett	7	11	Dunn
		Johnston	10	12	Benson, Clayton and Selma
		Lee	4	6	
12	5	Cumberland	10	17	
13	4	Bladen	4	6	
		Brunswick	4	7	
		Columbus	6	8	Tabor City
14	5	Durham	8	12	
15A	3	Alamance	7	10	Burlington
15B	3	Orange	4	9	Chapel Hill
		Chatham	3	6	Siler City
16A	2	Scotland	3	5	

		Hoke	4	5	
16B	5	Robeson	8	16	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
17A	3	Caswell	2	5	
		Rockingham	4	9	Reidsville, Eden, Madison
17B	2	Stokes	2	5	
		Surry	5	8	Mt. Airy
18	9	Guilford	20	26	High Point
19A	2	Cabarrus	5	9	Kannapolis
19B	3	Montgomery	2	4	
		Randolph	5	8	Liberty
19C	2	Rowan	5	10	
20	5	Stanly	5	6	
		Union	4	6	
		Anson	4	5	
		Richmond	5	6	Hamlet
		Moore	5	8	Southern Pines
21	7	Forsyth	3	15	Kernersville
22	5	Alexander	2	3	
		Davidson	7	10	Thomasville
		Davie	2	3	
		Iredell	4	8	Mooresville
23	3	Alleghany	1	2	
		Ashe	3	4	
		Wilkes	4	6	
		Yadkin	3	5	
24	3	Avery	3	4	
		Madison	4	5	
		Mitchell	3	4	
		Watauga	4	6	
		Yancey	2	4	
25	6	Burke	4	7	
		Caldwell	4	7	
		Catawba	6	9	Hickory
26	12	Mecklenburg	15	26	
27A	5	Gaston	11	20	
27B	3	Cleveland	5	8	

		Lincoln	4	6	
28	4	Buncombe	6	15	
29	4	Henderson	4	6	
		McDowell	3	4	
		Polk	3	4	
		Rutherford	6	8	
		Transylvania	2	4	
30	3	Cherokee	3	4	
		Clay	1	2	
		Graham	2	3	
		Haywood	5	7	Canton
		Jackson	3	4	
		Macon	3	4	
		Swain	2	3."	

(e) The additional district court judgeship for District Court District 6B, as provided for in subsection (d) of this section, shall become effective December 1, 1989. The judgeship shall be filled by the Governor. The initial appointee shall serve until a successor takes office. In the November 1990 general election, and quadrennially thereafter, a successor shall be elected for a four-year term beginning the first Monday in December after the election.

(f) Effective December 1, 1989, Nicholas Long and Harold P. McCoy, or their successors, shall be district court judges for District Court District 6A. Effective December 1, 1989, Robert E. Williford, or his successors, shall be district court judge for District Court District 6B.

(g) Of the funds appropriated to the Judicial Department for the 1989-90 fiscal year, $116,199 may be used to implement the provisions of subsections (d), (e), and (f) of this section. There is appropriated from the General Fund to the Judicial Department $182,604 for the 1990-91 fiscal year to implement the provisions of subsections (d), (e), and (f) of this section.

(h) Effective December 3, 1990, G.S. 7A-133 as rewritten by subsection (d) of this section reads as rewritten:

"*§ 7A-133. Numbers of judges by districts; numbers of magistrates and additional seats of court, by counties.*

Each district court district shall have the numbers of judges and each county within the district shall have the numbers of magistrates and additional seats of court, as set forth in the following table:

District	Judges	County	Magistrates Min.-Max.		Additional Seats of Court
1	3	Camden	1	2	

		Chowan	2	3	
		Currituck	1	2	
		Dare	3	5	
		Gates	2	3	
		Pasquotank	3	4	
		Perquimans	2	3	
2	3	Martin	5	8	
		Beaufort	4	5	
		Tyrrell	1	3	
		Hyde	2	4	
		Washington	3	4	
3	7	Craven	7	10	Havelock
		Pitt	10	12	Farmville, Ayden
		Pamlico	2	3	
		Carteret	5	8	
4	~~5~~ 6	Sampson	6	8	
		Duplin	9	11	
		Jones	2	3	
		Onslow	8	11	
5	~~5~~ 6	New Hanover	6	11	
		Pender	4	6	
6A	2	Halifax	9	14	Roanoke Rapids, Scotland Neck
6B	2	Northampton	5	6	
		Bertie	4	5	
		Hertford	5	6	
7	~~5~~ 6	Nash	7	10	Rocky Mount
		Edgecombe	4	6	Rocky Mount
		Wilson	4	6	
8	5	Wayne	5	8	Mount Olive
		Greene	2	4	
		Lenoir	4	7	La Grange
9	~~4~~ 5	Person	3	4	
		Granville	3	7	
		Vance	3	5	
		Warren	3	4	
		Franklin	3	6	
10	~~10~~ 11	Wake	12	17	Apex, Wendell, Fuquay-Varina, Wake Forest
11	~~5~~ 6	Harnett	7	11	Dunn
		Johnston	10	12	Benson, Clayton

					and Selma
		Lee	4	6	
12	~~5~~ 6	Cumberland	10	17	
13	4	Bladen	4	6	
		Brunswick	4	7	
		Columbus	6	8	Tabor City
14	5	Durham	8	12	
15A	3	Alamance	7	10	Burlington
15B	3	Orange	4	9	Chapel Hill
		Chatham	3	6	Siler City
16A	2	Scotland	3	5	
		Hoke	4	5	
16B	5	Robeson	8	16	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
17A	3	Caswell	2	5	
		Rockingham	4	9	Reidsville, Eden, Madison
17B	~~2~~ 3	Stokes	2	5	
		Surry	5	8	Mt. Airy
18	~~9~~ 10	Guilford	20	26	High Point
19A	2	Cabarrus	5	9	Kannapolis
19B	3	Montgomery	2	4	
		Randolph	5	8	Liberty
19C	2	Rowan	5	10	
20	~~5~~ 6	Stanly	5	6	
		Union	4	6	
		Anson	4	5	
		Richmond	5	6	Hamlet
		Moore	5	8	Southern Pines
21	7	Forsyth	3	15	Kernersville
22	~~5~~ 6	Alexander	2	3	
		Davidson	7	10	Thomasville
		Davie	2	3	
		Iredell	4	8	Mooresville
23	3	Alleghany	1	2	
		Ashe	3	4	
		Wilkes	4	6	
		Yadkin	3	5	

24	3	Avery	3	4	
		Madison	4	5	
		Mitchell	3	4	
		Watauga	4	6	
		Yancey	2	4	
25	~~6~~ 7	Burke	4	7	
		Caldwell	4	7	
		Catawba	6	9	Hickory
26	~~12~~ 13	Mecklenburg	15	26	
27A	5	Gaston	11	20	
27B	~~3~~ 4	Cleveland	5	8	
		Lincoln	4	6	
28	~~4~~ 5	Buncombe	6	15	
29	4	Henderson	4	6	
		McDowell	3	4	
		Polk	3	4	
		Rutherford	6	8	
		Transylvania	2	4	
30	3	Cherokee	3	4	
		Clay	1	2	
		Graham	2	3	
		Haywood	5	7	Canton
		Jackson	3	4	
		Macon	3	4	
		Swain	2	3."	

(i) Except for district court district 9, the additional judges authorized by subsection (h) of this section shall be nominated and elected in the 1990 primary and general elections in accordance with Chapter 163 of the General Statutes. The additional district court judge authorized for District Court District 9 by subsection (h) of this section shall be appointed by the Governor from nominations submitted by the bar of Judicial District 9 as defined in G.S. 84-19. The nominations must be submitted to the Governor not later than May 1, 1990. If the district bar fails to submit the nominations by May 1, 1990, the Governor shall make the appointment without the nominations. This additional district court judge shall begin service July 1, 1990, and serve the term expiring on the first Monday in December of 1992. A successor shall be elected in 1992 in accordance with general law.

ADD ADDITIONAL ASSISTANT DISTRICT ATTORNEYS/DIVIDE PROSECUTORIAL DISTRICT SIX

Sec. 24. (a) Effective September 1, 1989, G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Judicial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	5
2	Beaufort, Hyde, Martin, Tyrrell, Washington	4
3A	Pitt	5
3B	Carteret, Craven, Pamlico	~~4~~ 5
4	Duplin, Jones, Onslow, Sampson	~~8~~ 9
5	New Hanover, Pender	~~7~~ 8
~~6~~	~~Bertie, Halifax, Hertford, Northampton~~	~~4~~
6A	Halifax	2
6B	Bertie, Hertford, Northampton	2
7	Edgecombe, Nash, Wilson	~~7~~ 8
8	Greene, Lenoir, Wayne	8
9	Franklin, Granville, Person, Vance, Warren	6
10	Wake	~~15~~ 16
11	Harnett, Johnston, Lee	~~6~~ 7
12	Cumberland	11
13	Bladen, Brunswick, Columbus	5
14	Durham	8
15A	Alamance	~~3~~ 4
15B	Orange, Chatham	~~3~~ 4
16A	Scotland, Hoke	~~none~~ 2
16B	Robeson	7
17A	Caswell, Rockingham	4
17B	Stokes, Surry	3
18	Guilford	~~14~~ 15
19A	Cabarrus, Rowan	6
19B	Montgomery, Randolph	4
20	Anson, Moore, Richmond, Stanly, Union	~~8~~ 9
21	Forsyth	~~10~~ 11
22	Alexander, Davidson, Davie, Iredell	~~7~~ 8

23	Alleghany, Ashe, Wilkes, Yadkin	~~3~~ 4
24	Avery, Madison, Mitchell, Watauga, Yancey	3
25	Burke, Caldwell, Catawba	~~8~~ 9
26	Mecklenburg	~~19~~ 20
27A	Gaston	~~6~~ 7
27B	Cleveland, Lincoln	4
28	Buncombe	~~5~~ 6
29	Henderson, McDowell, Polk, Rutherford, Transylvania	6
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	5

(b) The district attorney authorized for Prosecutorial District 6A by subsection (a) of this section shall be appointed by the Governor for a term to expire December 31, 1990. A successor shall be elected in 1990 in accordance with general law.

(c) Effective September 1, 1989, David Beard, or his successor, shall be district attorney for Prosecutorial District 6B.

(d) There is appropriated from the General Fund to the Judicial Department $43,744 for the 1989-90 fiscal year and $152,090 for the 1990-91 fiscal year to implement the provisions of subsections (b) and (c) of this section. Of the funds appropriated to the Judicial Department for the 1989-90 fiscal year, $103,350 may also be used to implement the provisions of subsections (b) and (c) of this section.

(e) Effective July 1, 1990, G.S. 7A-60(a1) as rewritten by subsection (a) of this section reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Judicial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	~~5~~ 6
2	Beaufort, Hyde, Martin, Tyrrell, Washington	4
3A	Pitt	5
3B	Carteret, Craven, Pamlico	5
4	Duplin, Jones, Onslow, Sampson	9

5	New Hanover, Pender	8
6A	Halifax	2
6B	Bertie, Hertford, Northampton	2
7	Edgecombe, Nash, Wilson	8
8	Greene, Lenoir, Wayne	8
9	Franklin, Granville, Person, Vance, Warren	~~6~~ 7
10	Wake	16
11	Harnett, Johnston, Lee	7
12	Cumberland	11
13	Bladen, Brunswick, Columbus	~~5~~ 6
14	Durham	~~8~~ 9
15A	Alamance	4
15B	Orange, Chatham	4
16A	Scotland, Hoke	2
16B	Robeson	7
17A	Caswell, Rockingham	4
17B	Stokes, Surry	~~3~~ 4
18	Guilford	15
19A	Cabarrus, Rowan	6
19B	Montgomery, Randolph	4
20	Anson, Moore, Richmond, Stanly, Union	9
21	Forsyth	11
22	Alexander, Davidson, Davie, Iredell	8
23	Alleghany, Ashe, Wilkes, Yadkin	4
24	Avery, Madison, Mitchell, Watauga, Yancey	3
25	Burke, Caldwell, Catawba	9
26	Mecklenburg	20
27A	Gaston	7
27B	Cleveland, Lincoln	~~4~~ 5
28	Buncombe	6
29	Henderson, McDowell, Polk, Rutherford, Transylvania	6
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	~~5~~ 6

INDIGENT ACCESS TO CIVIL JUSTICE SYSTEM

Sec. 25. (a) Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 37A.

"Access to Civil Justice Act.

"*§ 7A-474.1. Legislative findings and purpose.*

The General Assembly of North Carolina declares it to be its purpose to provide access to legal representation for indigent persons in certain kinds of civil matters. The General Assembly finds that such representation can best be provided in an efficient, effective, and economic manner through Legal Services of North Carolina, Inc., and the geographically based field programs in this State receiving funds under the Legal Services Corporation Act (42 U.S.C. §2996 *et seq.*).

"*§ 7A-474.2. Definitions.*

The following definitions shall apply throughout this Article, unless the context otherwise requires:

(1) 'Eligible client' means a resident of North Carolina financially eligible for representation under the Legal Services Corporation Act, regulations, and interpretations adopted thereunder (45 CFR §1611, and subsequent revisions).

(2) 'Legal assistance' means the provision of any legal services, as defined by Chapter 84 of the General Statutes, consistent with this Article. Provided, that all legal services provided hereunder shall be performed consistently with the Rules of Professional Conduct promulgated by the North Carolina State Bar. Provided, further, that no funds appropriated under this Article shall be used for lobbying to influence the passage or defeat of any legislation before any municipal, county, state, or national legislative body.

(3) 'Legal Services of North Carolina, Inc.,' means the not-for-profit corporation established by the North Carolina Bar Association to administer the system of local legal services programs primarily funded under the Legal Services Corporation Act (42 U.S.C. §2996 **et seq.**) and the interest on Lawyer's Trust Accounts program of the North Carolina State Bar.

(4) 'Geographically based field programs' means the 15 local not-for-profit corporations supported by funds from Legal Services of North Carolina, Inc., and the Legal Services Corporation and which provide civil legal services to low-income residents of geographic service areas comprising all 100 counties in North Carolina.

"*§ 7A-474.3. Eligible activities and limitations.*

(a) Eligible Activities. Funds appropriated under this Article shall be used only for the following purposes:

(1) To provide legal assistance to eligible clients;

(2) To provide education to eligible clients regarding their rights and duties under the law;

(3) To involve the private bar in the representation of eligible clients pursuant to this Article.

(b) Eligible Cases. Legal assistance shall be provided to eligible clients under this Article only in the following types of cases:

(1) Family violence or spouse abuse;

(2) Assistance for the disabled in obtaining federal Social Security benefits;

(3) Representation of eligible farmers faced with the potential of farm foreclosure;

(4) Representation of eligible clients over the age of 60 regarding the following matters:

a. Wills and estates;

b. Safe and sanitary housing;

c. Pensions and retirement rights;

d. Social Security and Medicare rights;

e. Access to health care;

f. Food and nutrition; and

g. Transportation.

(5) Representation of eligible clients designed to enable them to obtain the necessary skills and means to obtain meaningful employment at a decent wage and reduce the public welfare rolls; and

(6) Representation of eligible clients under the age of 21 or eligible families with legal problems affecting persons under the age of 21 regarding the following matters:

a. Financial support and custody of children;

b. Day care;

c. Child abuse or neglect;

d. Safe and sanitary housing;

e. Food and nutrition; and

f. Access to health care.

(c) Limitations. No funds appropriated under this Article shall be used for any of the following purposes:

(1) To provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion;

(2) To provide legal assistance with respect to any criminal proceeding;

(3) To provide legal assistance to any agricultural employee or migrant farmworker employed in North Carolina with regard to the terms of the worker's employment, including conditions relating to housing;

(4) To provide legal assistance to any prisoner within the North Carolina Department of Correction with regard to the terms of that person's incarceration; or

(5) To provide legal assistance to persons with mental handicaps residing in State institutions with regard to the terms and conditions of the treatment or services provided to them by the State.

"§ 7A-474.4. *Funds.*

Funds to provide representation pursuant to this Article shall be provided to Legal Services of North Carolina, Inc., for provision of direct services by and support of the geographically based programs based upon the eligible client population in each program's geographic coverage area. Funds authorized by law shall be provided by the North Carolina State Bar to Legal Services of North Carolina, Inc., by a contract between those entities. The North Carolina State Bar shall not use any of these funds for its administrative costs.

"§ 7A-474.5. *Records and reports.*

Legal Services of North Carolina, Inc., shall keep appropriate records and make periodic reports, as requested, to the North Carolina State Bar."

(b) There is appropriated from the General Fund to the North Carolina State Bar, $1,000,000 for the 1989-90 fiscal year and $1,000,000 for the 1990-91 fiscal year for the implementation of this section.

DRUG TRAFFICKING PROSECUTION PROGRAM/13TH P.D.

Sec. 25.1. The Administrative Officer of the Courts may continue for the 1989-91 fiscal biennium the contract for a special drug trafficking prosecution program in the 13th Prosecutorial District from funds available within the Judicial Department.

FUNDS FOR UNDISCIPLINED JUVENILES PROGRAMS

Sec. 26. (a) There is appropriated from the General Fund to Bringing It All Back Home Study Center at Appalachian State University $41,000 for the 1989-90 fiscal year and $41,000 for the 1990-91 fiscal year, to allow the Center to continue its home remedies community-based alternatives program for undisciplined juveniles and their families.

(b) There is appropriated from the General Fund to the Youth and Family Counselling Service $80,000 for the 1989-90 fiscal year

and $80,000 for the 1990-91 fiscal year, to allow the Service to continue the Grimes Alternative School Model Program, a community-based alternatives program for undisciplined juveniles in the public schools in Davidson County.

DISTRICT ATTORNEY'S OFFICE STUDY

Sec. 27. From the funds appropriated to the Judicial Department in the certified budget for the 1989-91 biennium, the Administrative Office of the Courts may use such funds as are needed to study the efficiency of district attorney's offices in such prosecutorial districts as it deems necessary. Such funds may include not to exceed $50,000 for the employment of outside consultants.

MAKE PERMANENT A TEMPORARY ACT AUTHORIZING RECALL BY CHIEF JUSTICE OF RETIRED OR EMERGENCY JUSTICES OR JUDGES FOR TEMPORARY VACANCY

Sec. 27.1. G.S. 7A-39.14(f) is repealed.

Sec. 27.2. From the funds specifically appropriated to the Judicial Department in the certified budget for the 1989-90 fiscal year, the Administrative Office of the Courts may transfer within its budget up to $25,000 to support the existing Rape Victim Witness Counselor Program.

Sec. 28. From funds appropriated to the Judicial Department for fiscal year 1989-90, the Director of the Administrative Office of the Courts is directed to reimburse superior court judges for their commuting expenses incurred in fiscal year 1988-89 which were not reimbursed due to a lack of funds; provided, that no expenses shall be reimbursed unless the expenses are reimbursable under the rules and regulations of the Administrative Office of the Courts applicable to commuting costs.

Sec. 28.1. From funds appropriated to the Judicial Department in the certified budget for the 1989-91 biennium, the Administrative Office of the the Courts may use up to $23,000 for fiscal year 1989-90 and up to $23,000 for fiscal year 1990-91 for reimbursement of expenses and travel of the North Carolina delegation of the National Conference of Commissioners on Uniform State Laws.

COMPREHENSIVE CHILD SUPPORT ENFORCEMENT STUDY

Sec. 28.2. (a) Section 80 of Chapter 500 of the 1989 Session Laws is repealed.

(b) The Department of Human Resources and the Administrative Office of the Courts shall jointly undertake a comprehensive study of child support enforcement services in North Carolina. The report shall examine the current delivery of all child support services (IV-D and non-IV-D) by the Department of Human Resources, court offices, and county departments of social services. Such a study shall evaluate the efficiency and effectiveness of the current system and make

organizational, administrative, and procedural recommendations to optimize effective delivery of service to families. The study shall examine the potential for the delivery of child support enforcement services which would provide equitable treatment of cases regardless of case type.

The study shall examine the organizational and fiscal relationship between State- and county-administered programs with the goal of eliminating or reducing duplication and fragmentation in local IV-D programs and court offices. Proposals for system-wide reform of the program shall take into consideration the use of federal IV-D revenues to support program services. The report shall include the recommendations of the respective agencies, accompanied by estimates of the costs and potential benefits of those recommendations and a plan for the implementation of these proposals. The Department of Human Resources and the Administrative Office of the Courts may contract for outside consultation and assistance with the study with funds from existing resources in their budgets. An interim report shall be submitted to the Legislative Services Office by May 15, 1990, and to the 1989 General Assembly, 1990 Regular Session. A final report shall be submitted to the Legislative Services Office by January 15, 1991, and to the 1991 General Assembly.

DEATH PENALTY RESOURCE CENTER LIMITATIONS

Sec. 28.3. (a) The Death Penalty Resource Center shall:

(1) Provide consulting services to attorneys representing defendants in capital cases;

(2) Maintain a clearinghouse of materials to assist attorneys representing defendants in capital cases;

(3) Recruit qualified members of the private bar who are willing to provide representation in State and federal death penalty post-conviction proceedings; and

(4) Undertake direct representation and consultation in cases pending in federal court only to the extent that such work is fully federally funded.

The Center shall not lobby any entity, organization, or legislative body to urge either abolition or retention of the death penalty; no employee of the Center acting within the scope and course of that employment shall directly advocate the general abrogation of the death penalty, other than as may be appropriate in representing fully as attorney of record a defendant in a particular case.

(b) The Death Penalty Resource Center may:

(1) Serve as counsel of record for indigent defendants in capital cases in State court;

(2) To the extent fully funded by federal sources, serve as counsel of record in capital cases in federal court; and

(3) Provide training and continuing legal education to attorneys and perform such other tasks as may be necessary to ensure that adequate representation is provided to indigent defendants in capital cases.

The authority granted to the Center pursuant to subdivisions (1) and (2) of this subsection is subject to the Center's ability to decline this representation if, in the judgment of the Appellate Defender, the workload of the Center is such that it would substantially impair its ability to render adequate assistance of counsel in additional cases.

(c) The Director of the Administrative Office of the Courts shall submit to the 1989 General Assembly, Regular Session 1990:

(1) Formal job descriptions for the director and staff attorneys of the Death Penalty Resource Center, as well as written guidelines for keeping appropriate records of the time expended by the Center in State and federal cases; and

(2) A possible revision of G.S. 7A-486.2 that will provide for the appointment of the Appellate Defender and the Director of the Death Penalty Resource Center by the Director of the Administrative Office of the Courts or other appropriate person.

By October 1, 1990, the Appellate Defender shall submit a report to the Director of the Administrative Office of the Courts detailing the activities of the Center in the previous year, including a breakdown of the amount of time expended by the Center in State and federal cases. The report shall be forwarded to the 1991 General Assembly.

(d) If the Death Penalty Resource Center or any of its employees fails to comply with this section or any of its provisions, the Director of the Administrative Office of the Courts may refuse to seek continued State funding for the Center, or take such other actions that the Director considers appropriate.

Sec. 29. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, or is unenforceable under Section 5 of the Voting Rights Act of 1965, the invalidity or unenforceability shall not affect other provisions of the act which can be given effect without the invalid or unenforceable provision.

Sec. 30. This act shall become effective September 1, 1989, except that Sections 5(a)(1), 15, 16, 18, 25, 26, 27, and 27.1 are effective upon ratification. Section 28.1 is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 73 **CHAPTER 796**

AN ACT TO REVISE THE PERFORMANCE PAY SYSTEM IN EFFECT FOR STATE EMPLOYEES SUBJECT TO THE PROVISIONS OF CHAPTER 126 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-7 reads as rewritten:

"~~*§ 126-7. Performance salary increases for State employees.*~~

~~It shall be considered a part of the personnel policy of this State that salary increases as provided in the compensation plan shall be granted in accordance with a standard of efficiency as established by the State Personnel Commission. Each employee whose salary is at or below the third step of the salary range established for the class to which the position is assigned shall be granted a salary increase in an amount corresponding to the increments between steps of the applicable salary range at least once each year if the individual's performance merits the increase. Prior to July 1 of each biennium, each agency, board, commission, department, or institution of State government subject to the provisions of this Article shall file with the State Personnel Director a written description of the plan or method it is currently following in awarding or allocating efficiency or merit salary increments. At the same time, each such agency, board, commission, department, or institution shall cause a copy thereof to be distributed to each employee. The State Personnel Director, with the approval of the State Personnel Commission, shall modify, alter or disapprove any such plan submitted to him which he deems not to be in accordance with the provisions of this Article. Within the limit of available funds, each employee meeting higher standards may be granted increases up to but not exceeding the maximum of the salary range established for the class to which his position is assigned. If, in addition to the salary ranges, the State Personnel Commission shall establish uniform provisions for a system of payments over and above the standard salary ranges on the basis of longevity in service, that plan of payments shall not be considered in applying this policy governing annual salary increments. The head of each department, bureau, agency, or commission, when making his budget request for the ensuing biennium, shall anticipate the funds which will be required during the biennium for the purpose of paying salary increments and shall include those amounts in his budget request. In no case shall the amount estimated for annual increments above the third step of the range exceed two thirds of the sum which would be required to grant increments to all the personnel of the agency then receiving or who~~

~~will receive a salary equal to or above the third step of the salary range. With the approval of the State Personnel Commission, State departments, bureaus, agencies, or commissions with 25 or less employees subject to the provisions of this Chapter may exceed the two-thirds restrictions herein provided.~~

§ *126-7. Compensation of State employees.*

(a) It is the policy of the State to compensate its employees at a level sufficient to encourage excellence of performance and to maintain the labor market competitiveness necessary to recruit and retain a competent work force. To this end, salary increases to State employees shall be based, in part, on each individual employee's job performance and, in part, on general increases given to all State employees.

(b) To guide the Governor and the General Assembly in making appropriations to further the compensation policy of the State, the State Personnel Commission shall conduct annual compensation surveys. The Commission shall determine the percent of funds appropriated for salary increases to be reserved for a general increase for all State employees and the percent to be reserved for performance-based increases for eligible employees. The Commission shall present its recommendation on the percentages and the results of the compensation survey to the Appropriations Committees of the House and Senate no later than two weeks after the convening of the legislature in odd years and May 1st of even years. The amount reserved for performance increases shall not be less than twenty-five percent (25%) nor more than seventy-five percent (75%) of the total allocation.

(c) Performance increases shall be based on performance appraisals of all employees conducted by each department, agency, and institution. The State Personnel Commission, under the authority of G.S.126-4(8), shall adopt policy and regulations for performance appraisal. The policy and regulations shall include the following:

(1) The performance appraisal system of each department, agency, or institution shall be designed and administered to ensure that performance increases are distributed fairly and reward only performance that exceeds performance requirements.

(2) To be eligible to distribute its share of the performance increase allocation, a department, agency, or institution shall have an operative performance appraisal system which has been approved by the State Personnel Director. The performance appraisal system adopted shall use a rating scale of at least five levels, with the top three levels qualifying for performance increases, and shall adhere to

modern personnel management techniques and practices in common use in the public and private sectors. Departments, agencies, and institutions with existing performance appraisal systems which use a rating scale which is not consistent with the five-level system described above shall have until July 1, 1991, to bring their systems into compliance with this subsection.

(3) The State Personnel Director shall help departments, agencies, and institutions to establish and administer their performance appraisal systems and shall provide initial and ongoing training in performance appraisal and performance system administration.

(4) An employee whose performance exceeds performance requirements shall receive a performance increase unless the employee's supervisor justifies in writing the decision not to award the performance increase. An employee whose performance does not exceed performance requirements shall not receive a performance increase.

(5) The State Personnel Director shall set the performance increase ranges allowable for levels of performance that exceed performance requirements. Absent the supervisor's written justification, an employee whose performance exceeds expectations shall receive a percentage increase equal to the midrange value for his rating level. With the supervisor's written justification, an individual employee's increase may vary above or below the midrange value within the allowable range. A supervisor's performance appraisal plan, evaluation standards for each employee, and individual employee ratings and recommended performance increase amounts, with justification, shall be reviewed and approved by that supervisor's next higher level supervisor.

(6) The State Personnel Director may suspend any performance increase that does not appear to meet the intent of the provisions of the performance pay system and require the originating department, agency, or institution to reconsider or justify the increase.

(7) An employee who disputes the fairness of his performance evaluation or the sufficiency of the increase awarded or who believes that he was unfairly denied a performance increase shall first discuss the problem with his supervisor. Appeals of the supervisor's decision shall be made only to the grievance committee or internal performance review board of the department, agency, or institution which shall make a recommendation to the head of the department,

agency, or institution for final decision. The State Personnel Director shall help a department, agency, or institution establish an internal performance review board or, if it includes employee members, to use its existing grievance committee to hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34, performance pay disputes, including disputes about individual performance appraisals, shall not be considered contested case issues.

(8) The State Personnel Director shall monitor the performance appraisal system and performance increase distribution of each employing unit within each department, agency, and institution. Each department, agency, and institution shall submit to the Director annual reports which shall include data on the demographics of performance ratings, the frequency of evaluations, the performance pay increases awarded, and the implementation schedule for performance pay increases. The Director shall analyze the data to ensure that performance increases are distributed fairly within each department, agency, and institution and across all departments, agencies, and institutions of State government and shall report back to each department, agency, and institution on its appraisal and distribution performance.

(9) The State Personnel Director shall report annually on the performance pay program to the Commission. The report shall evaluate the performance of each department, agency, and institution in the administration of its appraisal system and the distribution of performance increases within each department, agency, and institution and across State government. The report shall include recommendations for improving the performance appraisal system and alleviating inequities. Copies of the report shall be sent to the State Auditor.

(10) The Commission shall report annually to the Governor, the Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Standing Personnel Committees of the House and the Senate. The Commission report shall include an evaluation of the administration of the appraisal system and distribution of performance increases by each department, agency, and institution. The State Personnel Director shall recommend to the General Assembly for its approval sanctions to be levied against departments, agencies, and

institutions that have deficient appraisal systems or that do not link performance increases to performance. These sanctions may include withholding performance increases from the managers and supervisors of individual employing units of departments, agencies, and institutions in which discrepancies exist.

(d) The provisions of subsections (a), (b), and (c) shall not affect the system of longevity payments established by the State Personnel Commission.

(e) Nothing in this section shall require or authorize any department, agency, or institution to establish a limitation on the number or percentage of employees who are eligible under this section to receive performance increases."

Sec. 2. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 515 **CHAPTER 797**

AN ACT TO CLARIFY ACCESS OF THE MEDICAL EXAMINER TO PHYSICAL EVIDENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-385 reads as rewritten:

"*§ 130A-385. Duties of medical examiner upon receipt of notice; reports; copies.*

(a) Upon receipt of a notification under G.S. 130A-383, the medical examiner shall take charge of the body, make inquiries regarding the cause and manner of death, reduce the findings to writing and promptly make a full report to the Chief Medical Examiner on forms prescribed for that purpose.

The Chief Medical Examiner or the county medical examiner is authorized to inspect and copy the medical records of the decedent whose death is under investigation. In addition, in an investigation conducted pursuant to this Article, the Chief Medical Examiner or the county medical examiner is authorized to inspect all physical evidence and documents which may be relevant to determining the cause and manner of death of the person whose death is under investigation, including decedent's personal possessions associated with the death, clothing, weapons, tissue and blood samples, cultures, medical equipment, X rays and other medical images. The Chief Medical Examiner or county medical examiner is further authorized to seek an administrative search warrant pursuant to G.S. 15-27.2 for the purpose of carrying out the duties imposed under this Article. In

addition to the requirements of G.S. 15-27.2, no administrative search warrant shall be issued pursuant to this section unless the Chief Medical Examiner or county medical examiner submits an affidavit from the office of the district attorney in the district in which death occurred stating that the death in question is not under criminal investigation.

The Chief Medical Examiner shall provide directions as to the nature, character and extent of an investigation and appropriate forms for the required reports. The facilities of the central and district offices and their staff services shall be available to the medical examiners and designated pathologists in their investigations.

(b) The medical examiner shall complete a certificate of death, stating the name of the disease which in his opinion caused death. If the death was from external causes, the medical examiner shall state on the certificate of death the means of death, and whether, in the medical examiner's opinion, the manner of death was accident, suicide, homicide or undetermined. The medical examiner shall also furnish any information as may be required by the State Registrar of Vital Statistics in order to properly classify the death.

(c) The Chief Medical Examiner shall have authority to amend a medical examiner death certificate.

(d) A copy of the report of the medical examiner investigation may be forwarded to the appropriate district attorney."

Sec. 2. This act shall become effective October 1, 1989, and shall apply to deaths occurring on or after that date.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.B. 577 **CHAPTER 798**

AN ACT TO PROVIDE FOR FUNDING AND IMPLEMENTATION OF CHANGES IN THE TEXTBOOK ADOPTION PROCESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-89 reads as rewritten:

"§ *115C-89. Selection of textbooks by Board.*

At the next meeting of the Board after the reports have been filed, the Textbook Commission and the Board shall jointly examine the reports. From the books evaluated the Board shall select those that it thinks will meet the teaching requirements of the State public schools in the instructional levels for which they are offered. The Board shall ~~then~~ request sealed bids from the publishers on all the ~~selected~~ books being considered.

The Board shall make all necessary rules and regulations concerning requests for bids, notification to publishers of calls for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation clauses, and such other material matters as may affect the validity of the contracts."

Sec. 2. Of the funds appropriated to the Department of Public Education for textbooks, the State Board of Education may use up to $240,504 for the 1989-90 fiscal year and up to $240,504 for the 1990-91 fiscal year to implement changes in the textbook adoption process.

Sec. 3. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 1309 **CHAPTER 799**

AN ACT TO MAKE MISCELLANEOUS CHANGES TO THE STATE BUDGET FOR THE 1989-90 FISCAL YEAR AND FOR PAST FISCAL YEARS.

The General Assembly of North Carolina enacts:

Section 1. From the funds appropriated to the Office of State Budget and Management in Section 4 of Chapter 754 of the 1989 Session Laws, the Capital Improvement Appropriations Act of 1989, to the Reserve for Repairs and Renovations, $2,777,160 is allocated as follows:

	1989-90
DEPARTMENT OF AGRICULTURE	
Division of Marketing - Grant-in-aid for a poultry marketing sales promotion.	$ 25,000 State Aid
DEPARTMENT OF HUMAN RESOURCES	
Division of Aging - Equal grants to the four regional Alzheimer's Chapters located in Charlotte, Winston-Salem, Raleigh, and Asheville.	50,000 State Aid
Western Carolina Center	
a. To construct an addition to the wheelchair shop.	105,160 Capital Improvements

b. To construct a roof over the outdoor recreation center. 20,000
Capital Improvements

c. To replace the air conditioning cooling towers. Funds will match an Exxon grant dollar-for-dollar. 200,000
Capital Improvements

DEPARTMENT OF CULTURAL RESOURCES

1. Grant-in-Aid to Arts - N.C. Shakespeare Festival - Grant for touring metropolitan and rural communities throughout the State to present major Shakespearean productions, to tour high schools and support operating expense. 75,000
State Aid

OFFICE OF STATE BUDGET AND MANAGEMENT

1. Autism Foundation of N.C. Inc., for development of a permanent year-round camp and conference center for autistic adults and children. 250,000
State Aid

2. Fairgrounds Rural Fire Department, Inc., in Wake County to match funds for construction of a new building to be used to continue fire protection to State-owned properties. 140,000
State Aid

3. Autistic Society of North Carolina - To continue grant for operations and stipends for the autistic children's and adults' camp. 262,000
State Aid

4. Grant to the Lineberger Cancer Research Center for planning of facility addition. 400,000
State Aid

5.	The Greenville Museum of Art, Inc., to match funds for construction of a new regional facility.	200,000 State Aid
6.	North Carolina Minority Economic Development Institute - Grant for operating expenses.	200,000 State Aid
7.	Rural Economic Development Center, Inc. - Grants to Community Development Corporations, incorporated under Chapter 55A of the General Statutes.	650,000 State Aid

UNIVERSITY OF NORTH CAROLINA - BOARD OF GOVERNORS

1.	University of North Carolina at Asheville - Renovations and/or addition to the Kellogg Center.	200,000 Capital Improvements

TOTAL ALLOCATIONS $2,777,160.

Requested by: Representative Diamont

-----BUDGET ACTS CORRECTIONS

Sec. 2. (a) Funds in the amount of $150,000 appropriated in Section 4 of Chapter 754 of the 1989 Session Laws, the Capital Improvement Appropriations Act of 1989, to the Department of Transportation for the 1989-90 fiscal year for the Vietnam Veterans Memorial Park - Establishment of Park on Interstate 85, contingent upon a match of $1 non-State for each $2 of State funds, are transferred to the Office of State Budget and Management and shall be used for the same purpose.

(b) Subsection (a) of Section 122 of Chapter 752 of the 1989 Session Laws, the Expansion Budget Appropriations Act of 1989, reads as rewritten:

"(a) Social Services Block Grant funds appropriated for fiscal year 1989-90 and included in ~~Section 6~~ Section 7 of this act shall be allocated as follows:

Swain County Cherokee Boys Club, Inc.	$30,000
Caldwell County Health Department	30,000
Robeson County Health Department	30,000
Harnett County Health Department	40,000
Buncombe County Health Department	40,000
Carteret County Community Action, Inc.	40,000
Davidson County Health Department	40,000
Greene County Health Care, Inc.	40,000
Bertie County Health Department	40,000
Scotland County Health Department	40,000
Macon County Programs for Progress	55,000
Mecklenburg County N.C. Coalition on Adolescent Pregnancy	20,000."

(c) Section 12 of Chapter 754 of the 1989 Session Laws, the Capital Improvement Appropriations Act of 1989, reads as rewritten:

"Requested by: Senator Royall, Representative Diamont

-----~~NEWBOLT-WHITE~~ NEWBOLD-WHITE HOUSE/STATE LAND

Sec. 12. Land purchased from funds appropriated in this act for land acquisition for the historic ~~Newbolt-White~~ Newbold-White House in Perquimans County shall be deeded to the State."

Requested by: Representative Diamont

-----GENERAL ASSEMBLY EXPENSES

Sec. 3. There is appropriated from the General Fund to the General Assembly the sum of $1,000,000 for the 1989-90 fiscal year to be used to support expenses associated with the extended term of the 1989 General Assembly and other expenses.

Requested by: Representative Diamont

-----COMPREHENSIVE SOLID WASTE MANAGEMENT PROGRAM FUNDS

Sec. 4. There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources the sum of $300,000 for the 1989-90 fiscal year for the establishment of the Solid Waste Management Trust Fund.

Requested by: Representative Michaux

-----AUDITOR DEPARTMENT COLLATOR

Sec. 5. Of the funds appropriated to the Department of State Auditor in Chapter 752 of the 1989 Session Laws, the Expansion Budget Appropriations Act of 1989, for the 1989-90 fiscal year for

data processing services, up to the sum of $27,000 may be used to purchase a new department collator.

Requested by: Representative Diamont
-----UNC PROJECTS ADJUSTMENT

Sec. 6. (a) Section 3 of Chapter 752 of the 1989 Session Laws, the Expansion Budget Appropriations Act of 1989, reads as rewritten:

"Sec. 3. Appropriations from the General Fund of the State for the operations and maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, except for aid to certain governmental and nongovernmental units, are made for the biennium ending June 30, 1991, according to the following schedule:

Current Operations - General Fund	1989-90	1990-91
General Assembly	$ 866,327	$ 467,455
Department of Secretary of State	259,101	276,222
Department of State Auditor	359,005	336,295
Department of State Treasurer	431,100	579,754
Department of Public Education	73,868,503	180,381,325
Department of Justice	1,984,288	2,185,905
Department of Insurance	168,216	265,311
Department of Administration	1,490,445	1,486,068
Department of Agriculture	1,402,836	1,918,637
Department of Labor	1,194,639	791,867
Department of Natural Resources and Community Development	2,603,610	2,913,581
Department of Human Resources		
01. DHR-Administration and Support Program	200,000	50,000
02. Division of Health Service	1,226,625	1,322,210
03. Social Services	3,440,420	6,750,543

04. Medical Assistance	7,154,259	15,330,389
05. Division of Services for the Blind	26,970	53,940
06. Cherry Hospital	1,065,376	1,420,502
07. Division of Facility Services	535,086	394,483
08. Division of Vocational Rehabilitation	-	677,754
Total Department of Human Resources	13,648,736	25,999,821
Department of Correction	9,326,508	24,322,698
Department of Commerce	(790,569)	(3,278,951)
Department of Revenue	5,091,431	3,047,331
Department of Cultural Resources	209,987	198,253
Department of Crime Control and Public Safety	1,470,045	1,389,453
University of North Carolina-Board of Governors		
01. University Operations-Lump Sum	(105,791)	7,638,328
02. Related Educational Programs	2,015,000	3,340,000
02A. Agricultural Programs	500,000	500,000
03. N.C. State University	(370,000)	(316,000)
04. UNC - Chapel Hill		
a. Health Affairs	(164,280)	(164,280)
b. Academic Affairs	(205,720)	(205,720)
05. University of North Carolina Hospitals at Chapel Hill	(250,000)	(250,000)
06. North Carolina School of Science and Mathematics	201,000	302,000
Total University of North Carolina ~~1,120,209~~	1,620,209 ~~10,344,328~~	10,844,328
Department of Community Colleges	13,336,189	11,131,540
Reserve for Employee Health Plan	30,000,000	40,000,000

Reserve for State Employees and Teachers Salary Increases	292,300,000	611,900,000
GRAND TOTAL CURRENT OPERATIONS-- GENERAL FUND	~~$ 450,340,606~~ $ 450,840,606 ~~$ 916,656,893~~	$ 917,156,893".

(b) Section 11 of Chapter 752 of the 1989 Session Laws, the Capital Improvement Appropriations Act of 1989, reads as rewritten:

"Requested by: Senator Royall, Representative Diamont

-----UNC CONSTRUCTION FUNDS/RESTRICTED RESERVE

Sec. 11. Of the funds appropriated to the Board of Governors of The University of North Carolina for construction, the following amounts are to be placed in a restricted reserve:

(1) North Carolina State University Engineering Graduate Research Center	$6,000,000	
(2) University of North Carolina - Chapel Hill		
(a) School of Business	6,500,000	
(b) Social Work Building	4,140,500	
(3) East Carolina University - Joyner Library	6,000,000	
(4) University of North Carolina at Asheville Conference Center	~~4,000,000~~	2,000,000
	~~$26,640,500~~	$24,640,500

None of these funds shall be obligated during fiscal year 1989-90, and, shall be held in reserve until the General Assembly appropriates the additional construction needs for these ~~projects.~~ projects, except that the full appropriation for the University of North Carolina at Asheville Conference Center may be contracted, with the stipulation that no more than $2,000,000 shall be available for contract payments during the 1989-90 fiscal year."

(c) Funds appropriated in Section 4 of Chapter 754 of the 1989 Session Laws, the Capital Improvement Appropriations Act of 1989, to the Board of Governors of The University of North Carolina for East Carolina University for the Center for Regional Advancement are not subject to any match requirement from non-State sources, provided no part of the facility is a sports arena.

Requested by: Senator Royall
-----UNIVERSITY OF NORTH CAROLINA PHYSICAL PLANT BUDGETED OVERHEAD RECEIPTS

Sec. 7. Budgeted overhead receipts related to the thirty percent (30%) transfers for support of physical plant operations for the University of North Carolina at Chapel Hill, Academic Affairs, for the 1989-90 and 1990-91 fiscal years, as reflected in Section 3 of Chapter 500 of the 1989 Session Laws, shall be increased by one hundred seventy-seven thousand three hundred forty-five dollars ($177,345) and the General Fund appropriations for the 1989-90 and 1990-91 fiscal years shall be decreased by like amounts. Budgeted overhead receipts related to the thirty percent (30%) transfers for support of physical plant operations for the University of North Carolina at Chapel Hill, Health Affairs, for the 1989-90 and 1990-91 fiscal years as reflected in Chapter 500 of the 1989 Session Laws shall be increased by one hundred forty-one thousand six hundred twenty-one dollars ($141,621) and the General Fund appropriations for the 1989-90 and 1990-91 fiscal years shall be decreased by like amounts.

The appropriations for the University of North Carolina at Chapel Hill, Health Affairs, from the General Fund for the 1989-90 and 1990-91 fiscal years shall be increased by three hundred eighteen thousand nine hundred sixty-six dollars ($318,966) for a Reserve for the Greensboro Regional TEACCH (Treatment and Education of Autistic and other Communications Handicapped Children and Adults) Center. This reserve shall be available for continuing operations of the Regional TEACCH Center which serves the Greensboro, High Point, and Winston-Salem area.

Requested by: Senator Basnight
-----HYDE COUNTY COMMUNICATIONS BUILDING

Sec. 8. The funds appropriated in Chapter 1086 of the 1987 Session Laws (1988 Session), for the Hyde County Sheriff's Department for construction of a communications tower on Ocracoke Island may also be used to construct a communications building.

Requested by: Representative Church
-----DEPARTMENT OF TRANSPORTATION RULES ON TRUCKS

Sec. 9. The Department of Transportation shall adopt rules pursuant to Chapter 150B regarding the provisions of G.S. 20-115.1 by December 1, 1989.

Requested by: Senators Johnson of Wake and Royall
-----REGIONAL PUBLIC TRANSPORTATION AUTHORITY FUNDING

Sec. 10. A Regional Public Transportation Authority created pursuant to Article 26 of Chapter 160A of the General Statutes may, in addition to all other powers granted by G.S. 160A-610, and in furtherance of G.S. 160A-613, apply for a grant from the Department of Transportation to be funded from the funds for public transportation received from the North Carolina Highway Trust Fund if those funds are available. The Department of Transportation may allocate to a regional public transportation authority any funds appropriated for public transportation.

Requested by: Representative J. Crawford
-----BRAILLE TEXTBOOKS

Sec. 11. The State Board of Education may use funds appropriated to the Department of Public Education for textbooks for the 1989-91 fiscal biennium to acquire Braille textbooks.

Requested by: Senator Sherron
-----DEPARTMENT OF TRANSPORTATION TO REPAIR AND MAINTAIN THE STATE PARKS ROAD SYSTEM

Sec. 12. (a) G.S. 136-44.2 reads as rewritten:

"*§ 136-44.2. Budget and appropriations.*

The Director of the Budget shall include in the '~~Budget~~ Current Operations Appropriations Bill' an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, ~~and~~ urban, and State parks road systems. The State primary system shall include all portions of the State highway system located outside municipal corporate limits which are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located outside municipal corporate limits that is not a part of the State primary system. The State urban system shall include all portions of the State highway system located within municipal corporate limits. The State parks system shall include all State parks roads which are not also part of the State highway system.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the

highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first consulted with the Joint Legislative Commission on Governmental Operations. For purposes of this section, 'federally eligible construction project' means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The '~~Budget~~ Current Operations Appropriations Bill' shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

In the event receipts and increments to the State Highway Fund shall be more than the appropriations made for the preceding fiscal year, such excesses shall be allocated by the Director of the Budget to the Department of Transportation for school and industrial access roads and unforeseen happenings or state of affairs requiring prompt action, with fifty percent (50%) of the balance to be allocated to the State secondary roads program on the basis of need as determined by the Department of Transportation and the remaining fifty percent (50%) to be allocated in accordance with G.S. 136-44.5.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day."

(b) G.S. 136-44.12 reads as rewritten:

"*§ 136-44.12. ~~Construction and maintenance~~ Maintenance of roads in areas administered by the Division of ~~State~~ Parks and Recreation.*

The Department of Transportation ~~is authorized to~~ shall ~~construct and~~ maintain all roads which are not part of the State Highway

System, leading into and located within the boundaries of all areas administered by the Division of ~~State~~ Parks and Recreation of the Department of Environment, Health, and Natural Resources ~~and Community Development~~.

All such roads shall be planned, designed, and engineered ~~and constructed~~ through joint action between the Department of Transportation and the Division of ~~State~~ Parks and Recreation of the Department of Environment, Health, and Natural Resources ~~and Community Development~~. This joint action shall encompass all accepted park planning and design principles. Particular concern shall be given to traffic counts and vehicle weight, minimal cutting into or through any natural and scenic areas, width of shoulders, the cutting of natural growth along roadways, and the reduction of any potential use of roads for any purpose other than by park users. All State park roads shall conform to the standards regarding width and other roadway specifications as agreed upon by the Division of ~~State~~ Parks and Recreation of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources and the Department of Transportation.

The State park road systems may be closed to the public in accordance with approved park practices that control the use of State areas so as to protect these areas from overuse and abuse and provide for functional use of the park areas, or for any other purpose considered in the best interest of the public by the Division of ~~State~~ Parks and Recreation of the Department of Environment, Health, and Natural Resources ~~and Community Development~~.

Nothing herein shall be construed to include the transfer to the Department of Transportation the powers now vested in the Division of ~~State~~ Parks and Recreation of the Department of Environment, Health, and Natural Resources ~~and Community Development~~ relating to the patrol and safeguarding of State parks or parkway roads."

(c) This section shall become effective July 1, 1990.

Requested by: Senator Parnell

-----CLEAN WATER REVOLVING LOAN AND GRANT FUND APPLICANTS

Sec. 13. G.S. 159G-3(2) reads as rewritten:

"(2) 'Applicant' means a local government unit that applies for a revolving loan or grant under the provisions of this Chapter. In addition, a local government may provide funds to a nonprofit agency which is currently under contract and authorized to provide wastewater treatment or water supply services to that unit of local government."

Requested by: Senator Murphy
-----P.B. RAIFORD REGIONAL AIRPORT IN DUPLIN COUNTY

Sec. 14. Section 165 of Chapter 1086 of the 1987 Session Laws reads as rewritten:

"Sec. 165. Of the funds appropriated for State Aid to Airports in G.S. 136-16.4 for fiscal year 1988-89, the sum of twenty-five thousand dollars ($25,000) shall be allocated to Duplin County for ~~drainage~~ capital improvements at the P.B. Raiford Regional Airport."

Requested by: Senator Marvin
-----PLAN FOR IMPLEMENTATION OF EDUCATIONAL PROGRAMS FOR CERTAIN HANDICAPPED CHILDREN

Sec. 15. (a) During the 1989-90 school year, the Department of Public Education shall plan the implementation of educational programs for handicapped children between the ages of three and five as provided by Title II of Public Law 99-457. The planning activities shall include:

(1) Identifying the number of handicapped children between the ages of three and five currently residing in the State;
(2) Identifying facilities in which services can be provided to these children;
(3) Estimating the number of qualified persons available to provide services to these children; and
(4) Developing rules and a budget for implementing the educational programs for handicapped children between the ages of three and five as provided by Title II of Public Law 99-457.

(b) The Department shall report to the General Assembly describing its planning activities, including proposed rules and a detailed budget request, no later than May 1, 1990.

(c) The Department of Human Resources, local school systems, local health departments, and local social services agencies shall provide the Department of Public Education with any assistance it requests in conducting its planning activities and preparing its report to the General Assembly.

Requested by: Representative R. Hunter
-----DOMESTIC VIOLENCE GRANTS/LUMP SUM PAYMENTS

Sec. 16. Funds appropriated to the Department of Administration, Council on the Status of Women, for fiscal years 1989-90 and 1990-91 for domestic violence centers shall be paid to the programs in lump sums as soon as possible after the programs qualify for grants.

Requested by: Senator Goldston
-----DEPARTMENT OF TRANSPORTATION EXEMPTION FROM LIMITATION ON NUMBER OF STATE EMPLOYEES

Sec. 17. The limitation on the number of State employees contained in G.S. 143-10.2 shall not apply to the Department of Transportation with respect to additional employees in administrative positions and to the Division of Highways with respect to operational and field positions when those administrative, operational, and field positions are needed to plan, design, and construct the specific projects funded by the North Carolina Highway Trust Fund. The Department shall report the number of employees hired and the number of those hired, if any, that exceeds the limitation in G.S. 143-10.2 to the Joint Legislative Highway Oversight Committee and the Joint Legislative Commission on Governmental Operations.

Requested by: Senator Goldston
-----NORTH CAROLINA HIGHWAY TRUST FUND CASH BALANCES

Sec. 18. Cash balances not required for construction payments in the North Carolina Highway Trust Fund may be advanced to the Highway Fund Equipment Fund to the extent required to acquire the appropriate equipment for force account construction of the Secondary Roads component of the North Carolina Highway Trust Fund construction schedule and plans. Advances under this section shall not exceed the requirements beyond the first three years and rental rates shall be established to provide for the repayment during the construction schedule. Before making an advance under this section, the Department of Transportation shall report a proposed advance to the Joint Legislative Highway Oversight Committee and the Joint Legislative Commission on Governmental Operations.

Requested by: Senator Goldston
-----DEPARTMENT OF TRANSPORTATION FUND CODE STRUCTURE REORGANIZATION

Sec. 19. During the 1989-90 fiscal year the Department of Transportation may reorganize the Fund Code Structure within and between Departmental Administration (Budget Code 84210), the Division of Highway Operations Administration (Budget Code 84220), and Construction and Maintenance Encumbrance Accounts (Budget Code 84230) in order to provide an efficient means of accommodating the additional requirements resulting from the North Carolina Highway Trust Fund. All changes including staff positions shall be approved by the Director of the Budget and reported quarterly to the

Joint Legislative Highway Oversight Committee and to the Joint Legislative Commission on Governmental Operations.

Requested by: Representative Huffman
-----MOBIL PLAN RESPONSE PROJECT

Sec. 20. Of the funds appropriated to the Department of Justice, the sum of $147,357 for the 1989-90 fiscal year may be used to provide continued support for staff in the Environmental Protection Section to provide legal services for the Mobil Plan Response Project.

Requested by: Senator Goldston
-----EXECUTIVE BUDGET ACT APPLIES TO NORTH CAROLINA HIGHWAY TRUST FUND

Sec. 21. Notwithstanding the establishment of the North Carolina Highway Trust Fund as an entity, since various components of that Fund are coordinated with programs of the Highway Fund, all projects funded shall be subject to the provisions of the Executive Budget Act (Article 1 of Chapter 143 of the General Statutes) with respect to allotments, obligations, encumbrances, and expenditures with appropriate reporting to the Director of the Budget in the same manner as currently employed for the Highway Fund and the Highway Bond Fund.

Requested by: Representative McLaughlin
-----CASH FLOW - HIGHWAY TRUST FUND APPROPRIATION

Sec. 22. The General Assembly authorizes and certifies anticipated revenues of the North Carolina Highway Trust Fund as follows:

For fiscal year 1991-92	$734,800,000
For fiscal year 1992-93	$756,700,000.

Requested by: Senator Plyler
-----ANSON COUNTY AIRPORT FUNDS REALLOCATION

Sec. 23. (a) Section 7 of Chapter 1101 of the 1987 Session Laws reads as rewritten:

"Sec. 7. Of the funds appropriated for State Aid to Airports in G.S. 136-16.4 for fiscal year 1988-89, the sum of fifty-eight thousand dollars ($58,000) shall be allocated to the Anson County Airport for runway maintenance, ~~and~~ airport construction, and other airport capital improvements."

(b) This section shall become effective July 1, 1988.

Requested by: Representative Huffman

-----STATE BUREAU OF INVESTIGATION SALARY ADJUSTMENT

Sec. 24. The State Bureau of Investigation may continue in fiscal year 1989-90 to pay overtime compensation for supervisory personnel as is being done on June 30, 1989, up to a maximum of five thousand two hundred dollars ($5,200) annually per individual. The Office of State Personnel shall study the issue of overtime compensation for State Bureau of Investigation supervisory personnel and make recommendations to the Senate and House Appropriations Committee on Justice and Public Safety and the Fiscal Research Division by April 15, 1990 as to whether such compensation should continue.

Requested by: Senator Basnight

-----CIVIL AIR PATROL HEADQUARTERS BUILDING FUNDS

Sec. 25. Notwithstanding any other provision of law, of the funds appropriated pursuant to G.S. 136-16.4 for aviation purposes, the sum of $100,000 shall be used for the 1989-90 fiscal year for the construction by the North Carolina Wing of the Civil Air Patrol, Inc., of a new headquarters and training facility. No less than ninety percent (90%) of these funds shall be used for capital improvements, and the remaining ten percent (10%) may be used for furnishings. In order to receive these funds, the North Carolina Wing of the Civil Air Patrol, Inc., shall match the funds on a dollar-for-dollar basis.

Requested by: Senator Royall

-----EXPAND PURPOSES CERTAIN RECEIPTS MAY BE USED FOR ON THE BUTNER LANDS

Sec. 26. G.S. 146-30 reads as rewritten:

"§ *146-30. Application of net proceeds.*

The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer. Provided, however, nothing herein shall be construed as prohibiting the disposition of any State lands by exchange for other lands, but if the appraised value in fee simple of any property involved in the exchange is at least twenty-five thousand dollars ($25,000), then such exchange may not be made without consultation with the Joint Legislative Commission on Governmental Operations.

For the purposes of this Subchapter, the term 'net proceeds' means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;
(2) Amounts paid pursuant to G.S. 105-296.1, if any; and
(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture, to be used for such specific capital improvement projects or other purposes as are provided by transfer of funds from those accounts in the Current Operations Appropriations Act. Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Environment, Health, and Natural Resources ~~and Community Development~~ shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as provided by transfer of funds from those accounts in the Current Operations Appropriations Act. In the Current Operations Appropriations Act, line items for purchase of park and agricultural lands will be established for use by the Departments of Administration and Agriculture. The use of such funds for any specific capital improvement project or land acquisition is subject to approval by the Director of the Budget. No other use may be made of funds in these line items without approval by the General Assembly except for incidental expenses related to the project or land acquisition. Additionally with the approval of the Director of the Budget, either Department may request funds from the Contingency and Emergency Fund when the necessity of prompt purchase of available land can be

demonstrated and funds in the capital improvement accounts are insufficient. Provided further, the net proceeds derived from the sale of any portion of the land in or around the unincorporated area known as Butner on or after July 1, 1980, shall be deposited with the State Treasurer in a capital improvement account to the credit of the Hospital to provide water and sewers and to bring those streets in the unincorporated area known as Butner not on the State highway system up to standards adequate for acceptance on the system, according to a plan adopted by the Department of Administration, and the Office of State Budget and Management, with the approval of the Board of County Commissioners of Granville ~~County and~~ County, to build industrial access roads to industries on the Butner ~~lands~~ lands, to construct new city streets on the Butner lands, extend water and sewer service on the Butner lands, and repair storm drains on the Butner lands."

Requested by: Senator Marvin

-----SIMPLIFY CLERKS OF SUPERIOR COURT SALARY SCHEDULE

Sec. 27. (a) G.S. 7A-101(a) as rewritten by Section 32 of Chapter 752, Session Laws of 1989, reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county, as determined by the population projections of the Office of State Budget and Management for the year preceding the first year of each biennial budget, according to the following schedule:

Population	Annual Salary	
	1989-90	1990-91
~~Less than 30,000~~	~~$ 38,472~~	~~40,788~~
~~30,000 to~~ Less than 99,999	$ 44,256	46,920
100,000 to 199,999	50,016	53,028
200,000 and above	57,072	60,504

When a county changes from one population group to another, the salary of the clerk shall be changed to the salary appropriate for the new population group on July 1 of the first year of each biennial budget, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

(b) From funds appropriated to the Judicial Department in the certified budget for the 1989-91 biennium, the Administrative Officer of the Courts may use up to three hundred thirty-two thousand six hundred twenty-five dollars ($332,625) in fiscal year 1989-90 and up

to three hundred thirty-three thousand eight hundred eighty-two dollars ($333,882) in fiscal year 1990-91 to meet the additional current operating expenses necessary to increase the salaries and benefits of clerks of superior court in counties with a population of less than 30,000 as required by subsection (a) of this section.

Requested by: Representative Redwine
-----WASTE STREAM ANALYSIS

Sec. 28. Section 34 of the Capital Improvement Appropriations Act of 1989 reads as rewritten:

"Requested by: Representatives Hackney, Redwine
~~-----SOLID WASTE MANAGEMENT TRUST FUND/~~ WASTE STREAM ANALYSIS

Sec. 34. Of the funds allocated from the Special Reserve for Oil Overcharge Funds to the North Carolina Housing Trust Fund in Section 2 of Chapter 841 of the 1987 Session Laws, the sum of $500,000 shall be reallocated to the Department of Commerce for the 1989-90 fiscal year to be used for a waste stream analysis by the Department of ~~Human Resources~~ Environment, Health, and Natural Resources. ~~These funds shall be matched on a one-to-one basis by private entities by April 30, 1990.~~ These funds shall be used to conduct 'waste stream' research in North Carolina counties. This research shall be contracted out by the Secretary of the Department of ~~Human Resources~~ Environment, Health, and Natural Resources on a competitive bid basis to an organization or firm that responds successfully to a 'request for proposals' (RFP) issued at the direction and approval of the Secretary of the Department of ~~Human Resources~~ Environment, Health, and Natural Resources. The RFP shall be issued by the Secretary and awarded no later than December 31, 1989. The RFP shall contain provisions for quarterly progress reports to be issued by the contractor to the Secretary, who shall also make provisions for distributing reports to private entities participating in the matching grants provision. Reports to the appropriate committees of the General Assembly shall be determined by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

~~A final report shall be issued to the Secretary of the Department of Human Resources and the General Assembly at the convening of the Regular Session 1991.~~ These funds shall be matched on a one-to-one basis by private entities by April 30, 1990. The Secretary shall appoint a special advisory panel, composed of representatives from local units of government and organizations participating in the matching grants program, to comment on contractors' ~~response~~ responses to the RFP. Panel members from local units of government

shall be appointed so as to ensure that all regions of the State are equally represented. The Secretary, however, shall have final responsibility for awarding the contract.

~~The RFP shall contain provisions for quarterly progress reports to be issued by the contractor to the Secretary, who shall also make provisions for distributing reports to private entities participating in the matching grants provision. Reports to the appropriate committees of the General Assembly shall be determined by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.~~

~~The~~ At a minimum, the waste stream analysis research study~~, at a minimum,~~ shall include scientific and statistically significant sampling of solid waste material in each of North Carolina's 120 landfills; or, ~~it shall be determined to~~ the study shall contain sufficient statistically reliable data to project, at ~~a sixty percent (60%)~~ an eighty percent (80%) confidence level, the content and volume of ~~any~~ all existing North Carolina ~~landfill~~ landfills or other properly permitted solid waste disposal ~~facility.~~ facilities. Based on these specific findings, additional written outcomes of this waste stream analysis shall be the following:

(1) Recommended solid waste disposal policies, appropriate for regions or local ~~governments,~~ units of government, that are considered practicable, as well as 'state-of-the-art'; that evaluate the financial impact and energy avoidance of recycling and alternative methods of solid waste disposal, including incineration and waste-to-energy options; that are consistent with contractor's findings; that contain specific procedures for monitoring market demand for recyclable goods; that identify potential domestic and foreign markets; that propose collection, storage, and transportation strategies, for ~~both single-county and multi-county~~ regions, and for multi-county and single-county collection, recycling, treatment, and disposal; and that identify all relevant operating costs, capital costs, and revenues derived through the sale of recycled waste stream components and energy, related to their implementation;

(2) A recommended solid waste management plan, based upon the policies recommended in subdivision (1) of this section, for the State of North Carolina, or regions therein, including policies the State may consider to provide incentives for recycling facilities to locate in North Carolina; that suggest future strategies the State might consider to ~~insure~~ ensure that its investments produce measurable reductions in solid waste, offer economic alternatives to traditional landfills, and

provide increased technical assistance to ~~cities and counties;~~ regions, counties, and cities;

(3) The plan, as recommended, shall contain a year-by-year determination of all relevant operating and capital costs, and propose recommended appropriations and/or financing mechanisms needed for the number of years required for its full implementation;

(4) Finally, the plan shall contain a specific evaluation component which shall describe criteria for measuring progress and results against the plan, and which shall be understood clearly by the general public.

The North Carolina Housing Finance Agency shall transfer the funds reallocated by this subsection to the Department of ~~Human Resources~~ Economic and Community Development no later than September 1, 1989.

The Department of Commerce shall submit comprehensive annual reports to the General Assembly by May 5, 1990, and January 31, 1991, which detail the use of all funds received in the Stripper Well Litigation that were used or expended by State agencies. Any State department or agency that has received oil overcharge funds shall provide all information requested by the Department of Commerce for the purpose of preparing this report. A final report of the waste stream analysis shall be issued by the contractor to the Secretary of the Department of Environment, Health, and Natural Resources and the General Assembly at the convening of the Regular Session 1991."

Requested by: Senator Ward

-----ALLOCATION OF BASIC EDUCATION PROGRAM ENHANCEMENT TEACHERS

Sec. 29. No school unit shall receive from funds appropriated in the continuation budget fewer Basic Education Program Enhancement Teachers in 1989-90 than it received in 1988-89.

Requested by: Representative Diamont

-----CELEBRATION '91 ACTIVITIES

Sec. 30. The Department of Commerce may continue for the 1989-91 biennium the development and implementation of Celebration '91 activities, a series of activities and events which are scheduled to occur across the State in 1991 to demonstrate local history and heritage.

Requested by: Senator Plyler

-----MOTOR FUELS TAX COLLECTION COSTS

Sec. 31. (a) Section 17 of Chapter 652 of the 1989 Session Laws reads as rewritten:

"Sec. 17. All sums collected on kerosene and motor fuel pursuant to ~~G.S. 119-18 that are not~~ G.S. 119-18, other than funds allotted by the Office of State Budget and Management to administer and enforce the provisions of Chapter 119 and funds retained by the Department of Revenue for the cost of collection of taxes under Subchapter V of Chapter 105 of the General Statutes shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Underground Petroleum Storage Tank Cleanup Fund as certified on a monthly basis as follows: one-half (½) shall be credited to the Commercial Fund and one-half (½) shall be credited to the Noncommercial Fund unless the balance in the Commercial Fund exceeds fifteen million dollars ($15,000,000), and in that event, all such funds shall be credited to the Noncommercial Fund until the balance of the Commercial Fund falls below five million dollars ($5,000,000), at which time credits to the Commercial Fund shall resume.

Notwithstanding any other provisions of law, any funds collected pursuant to G.S. 119-18 that are currently being credited to the General Fund shall remain in that Fund."

(b) Section 21 of Chapter 652 of the 1989 Session Laws reads as rewritten:

"Sec. 21. Section 5 of this act shall become effective 2 January 1990. ~~Section~~ Sections 17 and 19 of this act shall become effective 1 July 1989. Sections 1 through 4, Sections 6 through ~~18,~~ 16, and Sections ~~20~~ 18, 20 and 21 of this act are effective upon ratification."

Requested by: Senator Basnight

-----GATES COUNTY WASTEWATER SYSTEM FUNDS

Sec. 32. (a) Of the funds appropriated in Section 4 of the Capital Improvement Appropriations Act of 1989 to the Department of Natural Resources and Community Development for the Division of Coastal Management, $100,000 is redesignated to the Gates County Board of Education - to bring the High School's wastewater system into compliance with State and federal wastewater regulations.

(b) Section 23 of Chapter 754 of the 1989 Session Laws, the Capital Improvement Appropriations Act of 1989, reads as rewritten:

"Requested by: Representatives Holmes, G. Wilson

-----MASONBORO ISLAND ~~AND BUXTON-WOODS~~ FUNDS/USE

Sec. 23. Funds appropriated for the purchase of land at Masonboro Island ~~and for the purchase of land at Buxton-Woods~~ shall be used only for ~~those purposes.~~ that purpose. Notwithstanding any other

provision of law, these funds may not be used to purchase any other land or for any other purpose."

Requested by: Representative McLaughlin
-----TAX PROCEEDS CREDITED TO HIGHWAY TRUST FUND

Sec. 33. G.S. 105-173 as enacted by Chapter 692 of the 1989 Session Laws reads as rewritten:

"§ *105-173. Disposition of tax proceeds.*

Taxes collected under this Article at the rate of eight percent (8%) shall be ~~deposited in~~ credited to the General Fund. Taxes collected under this Article at the rate of three percent (3%) shall be ~~deposited in~~ credited to the North Carolina Highway Trust Fund. In each fiscal year the State Treasurer shall transfer the sum of one hundred seventy million dollars ($170,000,000) of the taxes deposited in the Trust Fund to the General Fund by transferring one-fourth of this amount at the end of each quarter in the fiscal year."

Requested by: Representative H. Hunter
-----USE OF FUNDS FOR EASTERN DETOXIFICATION PROGRAMS

Sec. 34. The Department of Human Resources may use up to $695,000 for the 1989-90 fiscal year from over-realized receipts, Block Grant carry-forward monies, prior year receipts or other funds available to the Department for the established detoxification programs in the Eastern region during the period of study required by the General Assembly to develop an Alcohol Rehabilitation Center Plan.

Requested by: Senator Royall
-----EFFECTIVE DATE

Sec. 35. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 380 **CHAPTER 800**

AN ACT TO MAKE AMENDMENTS TO THE ALCOHOLIC BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-102(a) reads as rewritten:

"(a) General Prohibition. -- It shall be unlawful for any person to manufacture, sell, transport, import, ~~export,~~ deliver, furnish, purchase, consume, or possess any alcoholic beverages except as authorized by the ABC law."

Sec. 2. G.S. 18B-1101(2) reads as rewritten:

"(2) Sell, deliver and ship unfortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that wine may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;".

Sec. 3. G.S. 18B-1102(2) reads as rewritten:

"(2) Sell, deliver and ship fortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that wine may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;".

Sec. 4. G.S. 18B-1104(3) reads as rewritten:

"(3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;".

Sec. 5. G.S. 18B-1105(2) reads as rewritten:

"(2) Sell, deliver and ship spirituous liquor in closed containers at wholesale to exporters and local boards within the State, and, subject to the laws of other jurisdictions, at wholesale or retail to private or public agencies or establishments of other states or nations;".

Sec. 6. G.S. 18B-208(b) reads as rewritten:

"(b) Special Fund. -- A special fund in the office of the State Treasurer, the ABC Commission Fund, is created. On and after November 1, 1982, all moneys derived from the collection of bailment charges and bailment surcharges shall be deposited in the ABC Commission Fund for the purpose of carrying out the provisions of this Chapter. The ABC Commission Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of this fund shall revert to the General Fund. The Commission shall fix the level of the bailment surcharges at an amount calculated to cover operating expenses of the Commission and the retirement of bonds issued for construction of a Commission warehouse and offices. Upon payment of the bonds issued pursuant to this section, the Commission shall reduce the bailment surcharge to an amount no greater than necessary to pay operating expenses of the Commission as authorized by the General Assembly. ~~The Commission may impose a bailment surcharge only when revenue bonds issued under this section are outstanding.~~

All moneys credited to the ABC Commission Fund shall be used to carry out the intent and purposes of the ABC law in accordance with

plans approved by the North Carolina ABC Commission and the Director of the Budget, and all these funds are appropriated, reserved, set aside, and made available until expended for the administration of the ABC law."

Sec. 7. G.S. 18B-902(f) reads as rewritten:

"(f) Fee Not Refundable. -- The fee required by subsection (d) shall not be refunded."

Sec. 8. G.S. 18B-903 is amended by adding two new subsections that read:

"(f) Lost Permits. -- The Commission may issue duplicate ABC permits for an establishment when the existing valid permits have been lost or damaged. The request for duplicate permits shall be on a form provided by the Commission, certified by the permittee and the Alcohol Law Enforcement Division, and accompanied by a fee of ten dollars ($10.00).

(g) Name Change. -- The Commission may issue new permits to a permittee upon application and payment of a fee of ten dollars ($10.00) for each location when the permittee's name or name of the business is changed."

Sec. 9. G.S. 18B-904(a) reads as rewritten:

"(a) Who Receives Permit.--An ABC permit ~~shall be issued to the owner of an establishment and~~ shall authorize the permitted activity only on the premises of the establishment named in the permit. An ABC permit shall be issued to the owner of the business conducted on the premises, or to the management company employed to independently manage and operate the business. The ABC Commission may determine if a management agreement delegates sufficient managerial control and independence to a manager or management company to require an ABC permit to be issued to the manager."

Sec. 10. G.S. 18B-904 is amended by adding a new subsection to read:

"(e) Business or Location No Longer Suitable. -- The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a)."

Sec. 11. G.S. 18B-1001(8) reads as rewritten:

"(8) Special Occasion Permit. -- A special occasion permit authorizes the host of a reception, party or other special

occasion, with the permission of the permittee, to bring ~~unfortified wine,~~ fortified wine and spirituous liquor onto the premises of the business and to serve the same to his guests. The permit may be issued for any of the following:

a. Restaurants;
b. Hotels;
c. Eating establishments;
d. Private clubs;
e. Convention centers."

Sec. 12. G.S. 18B-1001(9) reads as rewritten:

"(9) Limited Special Occasion Permit. -- A limited special occasion permit authorizes the permittee to bring ~~unfortified wine,~~ fortified wine and spirituous liquor onto the premises of a business, with the permission of the owner of that property, and to serve those alcoholic beverages to the permittee's guests at a reception, party, or other special occasion being held there. The permit may be issued to any individual other than the owner or possessor of the premises. An applicant for a limited special occasion permit shall have the written permission of the owner or possessor of the property on which the special occasion is to be held."

Sec. 13. G.S. 18B-1002(a)(2) reads as rewritten:

"(2) A permit may be issued to a nonprofit organization to allow the retail sale of malt beverages, unfortified wine, or fortified wine, or to allow brown-bagging, at a single fund-raising event of that organization. A permit for this purpose shall not be issued ~~to the same organization more than once during each quarter, and shall not be issued~~ for the sale of any kind of alcoholic beverage in a jurisdiction where the sale of that alcoholic beverage is not lawful."

Sec. 14. G.S. 18B-1002(a)(5) reads as rewritten:

"(5) A permit may be issued to a nonprofit organization or a political organization to serve wine, malt beverages, and spirituous liquor at a ticketed event held to allow the organization to raise funds. For purposes of this subdivision 'nonprofit organization' means an organization that is exempt from taxation under Section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code ~~and~~ or is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic, or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide

homeowners' or property owners' association. For purposes of this subdivision 'political organization' means an organization covered by the provisions of G.S. 163-96(a)(1) or (2) or a campaign organization established by or for a person who is a candidate who has filed a notice of candidacy, paid the filing fees or filed the required petition, and been certified as a candidate ~~for one of the offices listed in G.S. 163-1~~. The issuance of this permit will also allow the issuance of a purchase-transportation permit under G.S. 18B-403 and 18B-404 and the use for culinary purposes of spirituous liquor lawfully purchased for use in mixed beverages."

Sec. 15. G.S. 18B-1007 is amended by adding a new subsection to read:

"(d) When a temporary mixed beverages permit has been issued to a new permittee for the continuation of a business at the same location, the permittee going out of business may sell existing mixed beverages inventory to the new permittee, and the Commission may request that the local ABC board restamp the inventory with the mixed beverages tax stamp assigned by the local board to the new mixed beverages permittee."

Sec. 16. G.S. 18B-1207 is amended by adding a new subsection to read:

"(c) For any violation of the provisions of this Article, the Commission may take any of the following actions against the winery:

(1) Suspend the winery's permit for a specific period of time no longer than three years;

(2) Revoke the winery's permit;

(3) Issue an order suspending the shipment of the winery's products to one or more designated sales territories previously served by the wholesaler who has been terminated or who is the successor in interest to a wholesaler who sold the winery's products in the designated territory.

(4) Impose a monetary penalty up to fifteen thousand dollars ($15,000) for a first offense and up to thirty-five thousand ($35,000) for the second offense. All monetary penalties imposed by this subsection shall be remitted by the Commission to the State Treasurer for the General Fund.

In any case in which the Commission is entitled to suspend or revoke a permit, the Commission may accept from the winery an offer in compromise to pay a monetary penalty. The Commission may either accept a compromise or revoke a permit, but not both. The Commission may accept a compromise and suspend the permit in the same case."

Sec. 17. G.S. 18B-1207 is amended by adding a new subsection to read:

"(d) Notwithstanding the choice of forum agreed to by the parties, venue for all actions under this Article shall be determined by the trial judge based upon the convenience of witnesses and the promotion of the ends of justice."

Sec. 18. G.S. 18B-1006(i)(3) reads as rewritten:

"(3) A boat may hold the permits listed in G.S. 18B-1001(1), (3), (5), (7), and (10), but no off-premises sales may be made pursuant to those permits."

Sec. 19. G.S. 18B-700 is amended by adding a new subsection to read:

"(j) Limited Liability. -- A person serving as a member of a local ABC board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

(1) Was not acting within the scope of his official duties;

(2) Was not acting in good faith;

(3) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury;

(4) Derived an improper personal financial benefit from the transaction; or

(5) Incurred the liability from the operation of a motor vehicle.

The immunity in this subsection is personal to the members of local ABC boards, and does not immunize the local ABC board for liability for the acts or omissions of the members of the local ABC board."

Sec. 21. G.S. 18B-800 reads as rewritten:

"§ *18B-800. Sale of alcoholic beverages in ABC stores.*

(a) Spirituous Liquor. -- Except as provided in Article 10 of this Chapter, spirituous liquor may be sold only in ABC stores operated by local boards.

(b) Fortified Wine. -- In addition to spirituous liquor, ABC stores may sell fortified wine.

(c) Commission Approval. -- No ABC store may sell any alcoholic beverage which has not been approved by the Commission for sale in this State.

(d) Expansion of Credit Sales Prohibited. -- No ABC store, not currently authorized, may sell any alcoholic beverage by the use of credit cards."

Sec. 22. This act is effective upon ratification except for Sections 8 and 16 which shall become effective October 1, 1989, and except for Section 17 which applies only to actions brought after the date of ratification. Section 21 shall expire on June 1, 1991.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 1126 **CHAPTER 801**

AN ACT TO REQUIRE THE IMPLEMENTATION AND FUNDING OF A COMPREHENSIVE ALCOHOL AND DRUG USE PREVENTION EDUCATION PROGRAM FOR ALL STUDENTS GRADES K THROUGH TWELVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-81 is amended by adding a new subsection to read:

"(a3) Alcohol and Drug Education Program to Be Recommended and Implemented:

(1) A comprehensive education program that includes alcohol and drug use prevention education must be available to every child in North Carolina schools in kindergarten through high school.

(2) The State Board of Education shall develop and maintain a recommended list of alcohol and drug use prevention education materials that include components for teacher training and ongoing assessment and evaluation to verify success and ensure the use of up-to-date information and strategies.

(3) The Department of Public Instruction will work to strengthen instructional offerings in the content and skill areas of the Basic Education Program in which alcohol and drug use prevention education is addressed. Curricular materials and resources will be developed that meet, extend, and supplement drug and alcohol education as outlined in the North Carolina Standard Course of Study and the Teacher Handbook for the competency-based curriculum.

(4) The Department of Public Instruction shall recommend to the State Board of Education any drug use prevention education support materials that should be removed or added to the recommended list of curricular resources developed and maintained by the State Board of Education.

(5) Local boards of education may select supplemental alcohol and drug use prevention education materials from the list maintained by the State Board of Education, or develop their own supplemental materials to be approved by the State Board of Education.

(6) Local boards of education shall implement alcohol and drug use prevention education as a primary part of their comprehensive health education program.

(7) Local boards of education will provide for ongoing evaluation of drug use prevention education resources, to include participation in on-going evaluations with the Department of Public Instruction.

(8) Local boards of education must implement an approved drug and alcohol education prevention program for kindergarten through sixth grade by the 1990-91 school year, and for seventh grade through twelfth grade by the 1991-92 school year.

(9) Local boards of education will meet educational State accreditation standards related to instruction in preventing alcohol and drug use in grades K-12.

(10) The Department of Public Instruction, in conjunction with local school districts, will provide for staff development to train educators and support personnel to implement a comprehensive alcohol and drug use prevention education program.

(11) Sequential, age-appropriate instruction will be provided that has the following features:

a. Reaches all students in all grades;

b. Presents a clear and consistent message that the use of alcohol and illicit drugs and the misuse of other drugs is unhealthy and harmful;

c. Reflects current research and theory;

d. Includes all abusable substances;

e. Utilizes information that is current and accurate;

f. Involves students in active 'hands-on' learning experiences;

g. Integrates substance abuse education with other health and social issues and other subject nd skill areas of the North Carolina Basic Education Program and Standard Course of Study;

h. Promotes understanding and respect for the law and values of society;

i. Encourages health, safe, and responsible attitudes and behaviors;

j. Includes strategies to involve parents, family members, and the community;

k. Includes information on intervention and treatment services;

1. Is continually open to revision, expansion and improvement."

Sec. 2. This act does not obligate the General Assembly to appropriate any additional funds.

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

S.B. 231 **CHAPTER 802**

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Studies Act of 1989."

*****

An outline of the provisions of the act follows this section. The outline shows the heading "-----CONTENTS/INDEX-----" and lists by general category the descriptive captions for the various sections and groups of sections that compile the act.

-----CONTENTS/INDEX-----

This outline is designed for reference only, and the outline and the corresponding entries throughout the act in no way limit, define, or prescribe the scope or application of the text of the act. The listing of the original bill or resolution in the outline of this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the provisions contained in the original bill or resolution.

PART II.-----LEGISLATIVE RESEARCH COMMISSION

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Sec. 2.7

PART III.-----STATE PARKS STUDY COMMISSION

(S.B. 231 - Sherron, H.B. 436 - Crawford, N.J.).

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(S.B. 435 - Block, S.J.R. 74 - Marvin).

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PART V.-----EDUCATION STUDY COMMISSION

(H.B. 1616 - Warren of Pitt, H.B. 1377 - Bowman, S.B. 1254 - Ballance, S.B. 751 - Martin of Guilford).

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PART VI.-----ENERGY ASSURANCE STUDY COMMISSION

(S.B. 1119 - Rauch, H.B. 1947 - Payne).

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PART VII.-----MENTAL HEALTH STUDY COMMISSION
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PART VIII.-----MEDICAL MALPRACTICE CLAIMS ARBITRATION STUDY COMMISSION
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(S.B. 294 - Basnight).

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Sec. 12.2

PART XIII.-----SOCIAL SERVICES STUDY COMMISSION

(S.B. 326 - Walker, H.B. 400 - Colton).

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(S.B. 718 - Winner).

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PART XXV.-----EFFECTIVE DATE
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PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

(1) State Ports--study continued (S.J.R. 96 - Barker, H.B. 133 - Hall), Lease and Renegotiation of Contracts of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company,

(2) Development of a State Strategy for the Management of Solid Waste (S.J.R. 112 - Speed, S.B. 1214 - Basnight) and Infectious Wastes (H.B. 1045 - Diggs),

(3) Worker Training Trust Fund (S.B. 271 - Parnell),

(4) Tourism's Growth and Effect--study continued (S.B. 297 - Block, H.B. 379 - Warren) and Travel/Tourism Reorganization (H.B. 1132 - Perdue),

(5) Deregulation of Revolving Credit and Authorization of Credit Card Banks (S.B. 377 - Staton) and Linked Deposits (H.B.1910 - Locks),

(6) Administrative Procedure Act's Rule-Making Process (S.B. 535 - Johnson) and Office of Administrative Hearings and the Administrative Rules Review Commission (S.J.R. 1003 -Martin of Guilford, H.B. 1459 - Michaux),

(7) "Willie M." Programs (S.J.R. 887 - Block),

(8) State Procurement Contracts to Minority Business Enterprises (S.B. 927 - Hunt of Durham) and Small Business Technical Assistance Programs (H.J.R. 1514 - Colton),

(9) Consumer Protection Issues, including those relating to the Elderly (S.B. 1261 - Barker),

(10) State Marine Patrol (S.B. 1267 - Barker),

(11) Sports Fishing Licenses (S.B. 1284 - Barker),

(12) Revenue Laws--study continued, including the impact of 1989 tax law changes (H.J.R. 3 - Lilley) and Local Revenue Sources Options (S.B. 1298 - Odom),

(13) Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes--study continued (H.J.R. 173 - Easterling), Necessity for Certificates of Need, and Continuing Care Issues,

(14) Health Care/Insurance Costs Issues, including but not limited to, Availability, Benefits, Costs, Portability, Long-Term Care Insurance (H.B. 202 - Wiser), Health Insurance Costs (H.B. 961 - Perdue, S.B. 1068 - Johnson, Joe), Health Insurance (H.J.R. 1159 - Duncan), Infertility Treatment Coverage (H.B. 1187 - Payne), Mammogram/Pap Smear Coverage (H.B. 1014 - Barnes), and Health Care Insurance Coverage (H.B. 1242 - Mills),

(15) Development of a State Strategy for the Protection of All Groundwater Resources (H.J.R. 554 - DeVane, S.J.R. 367 - Winner),

(16) Surface Water Quality and Resources Issues, Including Interbasin Transfer, Albemarle-Pamlico Estuarine (H.J.R. 33 - Ethridge, B.), Coastal Water Quality -- study continued (H.J.R. 37 - Ethridge, B.), Haw in Scenic River System (H.B. 1224 - Hackney), Pesticides (H.J.R. 1399 - Holt), Water Resources Planning (H.B. 1945 - Payne), Toxaway River (H.B. 1955 - Colton), and Yadkin River Use and Protection (S.B. 1182 - Kaplan),

(17) Insanity Verdict (H.B. 1364 - Rhodes), and Guilty but Insane Verdict (H.B. 1372 - Sizemore),

(18) Agriculture Study (H.B. 1362 - Brown), Agribusiness Plant Variances (H.B. 1304 - Bowman), Fallow Deer (H.J.R. 1924 - James).

(19) Homeless Persons (H.B. 2018 - Greenwood, S.B. 1290 - Martin of Guilford),
(20) State Information Processing Needs and Cost -- study continued (S.B. 47 - Royall),
(21) Sports Fishing Licenses (S.B. 1284 - Barker),
(22) Proprietary Schools (S.B. 854 - Martin, W.),
(23) Public Employees' Day Care and Medical and Dental Benefits.

Sec. 2.2. Legislative Activity Between Legislative Sessions and Procedures to Shorten the Legislative Session. The Legislative Research Commission may study the procedures of this State's, other states' and other legislative bodies' practices and procedures regulating legislative and study activity and may make recommendations as to changes in law, procedures and rules that will lead to greater efficiency in the legislative process while safeguarding the rights of all members of the General Assembly and of the citizens in this State's legislative process.

Sec. 2.3. State Capital Assets and Improvements (S.B. 1240 - Sherron). The Legislative Research Commission may study the:

(1) Inventory of State capital assets and the use of those assets,
(2) Issue of preventive maintenance for State buildings, and
(3) Need and feasibility of:
   a. Establishing in the State budget a reserve for repairs and renovations and the administration of such a reserve, and
   b. Charging rent to State agencies using State buildings.

Sec. 2.4. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.5. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1990 Session of the 1989 General Assembly or the 1991 General Assembly, or both.

Sec. 2.6. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.7. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART III.-----STATE PARKS STUDY COMMISSION

Sec. 3.1. There is created a Study Commission on State Parks and Recreation Areas to be composed of nine members, with three Senators to be appointed by the President Pro Tempore of the Senate, three Representatives appointed by the Speaker of the House, and three public members to be appointed by the Governor. Appointments to the Study Commission shall be made within 30 days subsequent to the adjournment of the General Assembly in 1989. The President Pro Tempore of the Senate and the Speaker of the House shall each designate a cochairman from their appointees. Either cochairman may call the first meeting of the Study Commission.

Sec. 3.2. The Study Commission is authorized:

(1) To identify the needs of State Parks and Recreation Areas;

(2) To collect and evaluate reports and recommendations of various agencies, councils, and associations relating to State Parks and Recreation Areas;

(3) To study the recreation potential of the Randleman Dam area and its possible inclusion in the State Parks System;

(4) To review and formulate recommended legislation; and

(5) To study any other issues pertinent to the State Parks and Recreation System.

Sec. 3.3. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The cochairmen may assign and direct the activities of the employees, subject to the advice of the Study Commission. The Department of Environment, Health, and Natural Resources and any other departments, boards, or associations shall assist the Study Commission and furnish any information or expertise requested.

Sec. 3.4. The Study Commission may file an interim report to the General Assembly on or before the convening of the 1990 Session and shall file a final written report of its findings and recommendations with the presiding officer of the House of Representatives and the Senate on or before the convening of the 1991 Session of the General Assembly. The Study Commission shall terminate upon the filing of the final report.

Sec. 3.5. Members of the Study Commission shall be paid compensation and per diem and travel expenses in accordance with

G.S. 138-5. Members who are legislators shall be reimbursed for travel and subsistence in accordance with G.S. 120-3.1.

Sec. 3.6. There is allocated from the funds appropriated to the General Assembly to the State Parks Study Commission for its work the sum of $20,000 for the 1989-90 fiscal year and the sum of $20,000 for the 1990-91 fiscal year.

PART IV.-----PUBLIC HEALTH STUDY COMMISSION

Sec. 4.1. There is established the Public Health Study Commission, an independent commission, to study public health services in North Carolina and to recommend improvements that will assure that North Carolina has cost-effective, uniform and consistently administered public health services.

Sec. 4.2. The Commission shall consist of 21 members. The Speaker of the House of Representatives shall appoint seven members, a minimum of four of whom shall be members of the House of Representatives. The President Pro Tempore of the Senate shall appoint seven members, a minimum of four of whom shall be members of the Senate. The Governor shall appoint seven non-legislative members, as follows: one of whom shall be a recipient of public health services, one of whom shall be a public health director, one of whom shall be a county commissioner, one of whom shall be an advocate for low-income people who is familiar with public health services in North Carolina, one of whom shall be the Secretary of the Department of Environment, Health, and Natural Resources or a designee thereof, one of whom shall be a physician licensed to practice medicine under Chapter 90 of the General Statutes, and one of whom shall be an individual involved in the administration or funding of public health services.

Initial appointments shall be made within 30 days following adjournment of the 1989 Session of the General Assembly. Vacancies shall be filled by the official who made the initial appointment using the same criteria as provided by this section.

Sec. 4.3. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a cochair of the Commission from their appointees. The cochairs shall call the first meeting and preside at alternate meetings.

Sec. 4.4. The Public Health Study Commission shall examine the need for improvement in the statewide public health delivery system through local communities and the need for additional legislation to deal with Acquired Immune Deficiency Syndrome -- AIDS within this State, and shall develop legislation to address those needs. If legislation is enacted directing the Department of Environment, Health and Natural Resources to develop a Public

Health Services Plan, the Department may provide status reports on the development of the Plan to the Commission. Upon completion of the Plan, the Department shall submit the Plan to the Commission for the Commission's review.

Sec. 4.5. Commission members shall receive subsistence and travel expenses as provided in G.S. 120-3.1, 138-5, and 138-6, as applicable.

Sec. 4.6. The Commission may solicit, employ, or contract for professional, technical, or clerical assistance, and may purchase or contract for the materials and services it needs. Subject to the approval of the Legislative Services Commission, the professional and clerical staff of the Legislative Services Office shall be available to the Commission, and the Commission may meet in the Legislative Building or the Legislative Office Building. With the consent of the Secretary of the Department of Environment, Health, and Natural Resources, staff employed by the Department or any of its divisions may be assigned permanently or temporarily to assist the Commission or its staff.

Sec. 4.7. Upon request of the Commission or its staff, all State departments and agencies and all local government agencies shall furnish the Commission or its staff with any information in their possession or available to them.

Sec. 4.8. The Commission shall submit a final written report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate before or upon the convening of the 1991 Session of the General Assembly. The Commission shall terminate upon the filing of the report.

Sec. 4.9. There is allocated from the funds appropriated to the General Assembly $25,000 for fiscal year 1989-90 and $25,000 for the 1990-91 fiscal year to fund the work of the Commission created by this Part.

PART V.-----EDUCATION STUDY COMMISSION

Sec. 5.1. There is established the Education Study Commission. The Commission shall be composed of 20 members, as follows:

(1) The Superintendent of Public Instruction, or his designee;
(2) The Chairman of the State Board of Education, or his designee;
(3) The President of the Community College System, or his designee;
(4) The President of The University of North Carolina, or his designee;

(5) Five members appointed by the Governor, two of whom shall be local school board members;
(6) Five members appointed by the President Pro Tempore of the Senate, two of whom shall be classroom teachers;
(7) Five members appointed by the Speaker of the House of Representatives, two of whom shall be classroom teachers; and
(8) One representative of business and industry appointed by the Governor.

Sec. 5.2. The President Pro Tempore of the Senate shall designate one of his appointees as cochairman and the Speaker of the House of Representatives shall designate one of his appointees as cochairman.

Sec. 5.3. When a vacancy occurs in the membership of the Commission, the vacancy shall be filled by the same appointing officer who made the initial appointment. All initial appointments shall be made within one calendar month from the effective date of this act. The Commission shall have its initial meeting no later than October 1, 1989.

Sec. 5.4. The Commission shall:

(1) Consider ways the systems could work together to reduce the amount of remediation that is done in the community colleges and the universities;
(2) Examine the salary schedules for the public schools;
(3) Consider ways the community colleges could assist the public schools with the dropout problem;
(4) Examine current cooperative programs among the systems and consider ways to enhance concurrent enrollment programs;
(5) Consider ways to improve the joint use of facilities, equipment, and faculty;
(6) Consider ways the systems could work jointly to increase the number of high school graduates who continue on to either system of higher education;
(7) Consider ways to more closely articulate the curriculums, especially in the technical and vocational areas, of the public schools and the community colleges;
(8) Recommend both short range and long range funding solutions for the issues it studies;
(9) Study whether North Carolina could make better use of its buildings and equipment by:
    a. Using the public school bus fleet for other education transportation needs such as community colleges; and

b. Using the school buildings during the summer months by extending the school year beyond the present nine-month term;

(10) Study issues and matters identified in Senate Bill 751 -- "State Educational Equity Grants" -- of the 1989 Session;

(11) Study other methods of focusing on issues related to students at risk of academic and social failure so as to significantly increase the likelihood that all North Carolina students will graduate from high school with academic and social skills that will enable them:

a. To be well-rounded productive citizens, and

b. To be adequately prepared to handle the increasingly complex tasks that will enable them to successfully pursue and complete higher levels of academic and/or vocational education;

(12) Study the feasibility of establishing a State and/or local government "Earn to Learn" program, the purpose of which would be to encourage and facilitate the enrollment of high school graduates in post-secondary institutions in North Carolina. In conducting this study, the Commission is encouraged to consider inclusion of the following components in the program:

a. Employment of high school graduates in State and local agencies, or other agencies, in or reasonably accessible to their places of residence; and

b. Development of a formula by which earnings and/or work credits can be applied to the cost of attendance at a State operated post-secondary institution;

(13) Study the feasibility of establishing an educators hall of fame to honor North Carolina educators who have made significant contributions to the education of the citizens of this State; and

(14) Receive and consider reports of other studies concerning the matters set out in this section and concerning related matters.

Sec. 5.5. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1991 Session of the General Assembly by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate.

Sec. 5.6. The Commission may meet at any time upon the joint call of the cochairmen. The Commission, with the approval of the

Legislative Services Commission, may meet in the Legislative Building or the Legislative Office Building.

Sec. 5.7. Members of the Commission who are legislators shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. Other members of the Commission shall be paid per diem and allowances at the rates set forth in G.S. 138-5.

Sec. 5.8. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisor of Clerks shall assign clerical staff to the Commission upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Commission.

Sec. 5.9. All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

Sec. 5.10. There is allocated from the funds appropriated to the General Assembly to the Education Study Commission $50,000 for the 1989-90 fiscal year, and $25,000 for the 1990-91 fiscal year.

PART VI.-----ENERGY ASSURANCE STUDY COMMISSION

Sec. 6.1. (a) The North Carolina Energy Assurance Study Commission is created. The Commission shall consist of 19 members. The Chairman of the Utilities Commission, the Director of the Public Staff of the Utilities Commission, the Director of the N.C. Rural Electrification Authority, the Secretary of the Department of Human Resources, and the Director of the Energy Division of the Department of Economic and Community Development shall serve ex officio. The President Pro Tempore of the Senate shall appoint seven members as follows: two members of the Senate, one representative from the electric utility industry regulated by the Utilities Commission, one representative from an electric membership corporation in North Carolina, one representative of the unregulated fuels industry, one representative of a private agency that delivers energy assistance benefits to low-income people, and one low-income utilities consumer advocate. The Speaker of the House of Representatives shall appoint seven members as follows: two members of the House of Representatives, one representative from ElectriCities of North Carolina, one director of a county department of social services, one representative of the natural gas industry regulated by the Utilities

Commission, one representative of the Community Action Program agencies, and one low-income person.

(b) The members of the Commission shall be appointed by September 1, 1989, and shall serve until termination of the Commission. If a vacancy occurs in the membership of the Commission, it shall be filled by the officer who appointed the member who is to be replaced. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a cochair from among the membership of the Commission, but no ex officio member of the Commission may serve as a cochair.

Sec. 6.2. (a) The Commission shall investigate the feasibility of establishing an Energy Assurance Plan in North Carolina to accomplish the following objectives:

(1) Aid low-income people in maintaining reasonable and safe levels of heat in their homes;

(2) Reduce the number of involuntary terminations of energy to low-income households in the State; and

(3) Direct federal, State, local, and private efforts in weatherizing homes to those which have the most significant needs.

(b) In investigating the feasibility of such a plan, the Commission shall:

(1) Document, to the extent possible, the scope of current problems facing low-income people in dealing with their energy burdens;

(2) Determine, through a study of the administration of the Low Income Energy Assistance Program funds in North Carolina, a method by which these funds could be better targeted to address the energy needs of low-income people;

(3) Determine the cost of establishing an Energy Assurance Plan in North Carolina;

(4) Investigate sources of revenue to fund an Energy Assurance Plan; and

(5) Recommend an Energy Assurance Plan that will accomplish the stated objectives through the use of existing federal, State, local, and private funds or alternative sources of revenue.

Sec. 6.3. The initial meeting of the Commission shall be called by the cochairs. Subsequent meetings shall be held upon the call of a cochair or upon the written request of five members.

Sec. 6.4. The Commission may file an interim report on or before June 1, 1990, and shall file its final report by February 1, 1991, with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The report shall summarize the

information obtained in the course of the Commission's inquiry, set forth its findings and conclusions, and recommend administrative actions or legislative actions that may be necessary to implement the Energy Assurance Plan. If legislation is recommended, the Commission shall prepare and submit with its report appropriate bills. Upon termination of the Commission, the cochairs shall transmit to the Legislative Library for preservation the records and papers of the Commission. The Commission shall terminate upon the filing of its report.

Sec. 6.5. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Energy Assurance Commission, subject to the provisions of G.S. 120-32.02(b), may enter into contracts for the provision of technical assistance, statistical analysis, evaluation of pilot projects, and other services it finds necessary for the performance of its responsibilities under this Part.

Sec. 6.6. Members of the Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Commission shall be paid the per diem and allowances set forth in G.S. 138-5.

Sec. 6.7. There is allocated from the funds appropriated to the General Assembly to the Commission created by this Part the sum of $10,000 for the 1989-90 fiscal year to prepare and submit a plan of study to obtain the requisite federal approval for the spending of monies specifically appropriated for the work of the Energy Assurance Study Commission. Funds specifically appropriated to the Department of Economic and Community Development to be allocated to the Energy Assurance Study Commission are hereby transferred to the General Assembly for the work of the Commission. Notwithstanding any other provision of law and except for the specific transfer from the reserve for studies contained in this section, only funds specifically appropriated to the Department of Economic and Community Development for the Energy Assurance Study Commission may be expended for the work of the Commission. Unexpended funds shall revert to the Special Reserve for Oil Overcharge Funds.

PART VII.-----MENTAL HEALTH STUDY COMMISSION

Sec. 7.1. The Mental Health Study Commission, established and structured by 1973 General Assembly Resolution 80; Chapter 806, 1973 Session Laws; Chapter 185, 1975 Session Laws; Chapter 184, 1977 Session Laws; Chapter 215, 1979 Session Laws; 1979 General Assembly Resolution 20; Chapter 49, 1981 Session Laws; Chapter 268, 1983 Session Laws; Chapter 792, 1985 Session Laws; and Chapter 873, 1987 Session Laws; is revived and authorized to continue in existence until July 1, 1991.

Sec. 7.2. Section 2 of Resolution 80, Session Laws of 1973, as amended by Chapter 806, Session Laws of 1973, Section 2 of Chapter 184, Session Laws of 1977, and as rewritten by Section 10.1 of Chapter 792 of the 1985 Session Laws, reads as rewritten:

"Sec. 2. Appointment of Members. The Commission shall consist of 24 members. The Speaker of the House shall appoint eight members at least six of whom at the time of their appointment are members of the House~~, and one of those six shall be Chairman of the Mental Health Committee of the House of Representatives~~. The President Pro Tempore of the Senate shall appoint eight members at least six of whom at the time of their appointment are members of the Senate, and one of those six shall be Chairman of the Senate Human Resources Committee. The Governor shall appoint eight members, two of whom at the time of their appointment shall be county commissioners taken from a list of four candidates nominated by the North Carolina Association of County Commissioners. If that Association fails to make nominations by September 1, ~~1985~~ 1989, the Governor may appoint any two county commissioners."

Sec. 7.3. The first sentence of Section 3 of Resolution 80, Session Laws of 1973, as the same was rewritten by Section 10.2 of Chapter 792 of the 1985 Session Laws and is contained therein, is rewritten to read:

"The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a cochairman from the Commission's membership."

Sec. 7.4. The continued Mental Health Study Commission shall have all the powers and duties of the original Study Commission as are necessary to continue the original study, to assist in the implementation of the original and succeeding Study Commission recommendations and to plan further activity on the subject of the study.

Sec. 7.5. Members and staff of the continued Mental Health Study Commission shall receive compensation and expenses as under the original authorization in the 1973 General Assembly Resolution 80. Expenses of the Commission shall be expended by the

Department of Human Resources from Budget Code 14460 subhead 1110.

Sec. 7.6. In addition to other studies authorized by law, the Mental Health Study Commission shall:

(1) Have oversight, and review and make recommendations regarding the implementation of the Comprehensive Long Range Plan for Adults with Severe and Persistent Mental Illness;

(2) Have oversight, and review and make recommendations regarding pioneer testing of funding policies;

(3) Continue the study of insurance coverage for mental illness and chemical dependency;

(4) Continue the study of mental health services in the criminal justice system, particularly in North Carolina jails; and

(5) Examine the needs of adult citizens suffering from substance abuse and develop a comprehensive plan to provide a continuum of care to respond to those needs.

Sec. 7.7. There is transferred from the Legislative Services Commission reserve for studies to the Department of Human Resources for the 1989-90 fiscal year $20,000 for the use of the Commission in the study of insurance coverage for mental illness and chemical dependency.

PART VIII.-----MEDICAL MALPRACTICE CLAIMS ARBITRATION STUDY COMMISSION

Sec. 8.1. The Medical Malpractice Arbitration Study Commission is hereby created. The Commission shall consist of 13 members who shall be appointed as follows:

(1) Five members appointed by the Speaker of the House of Representatives as follows:

a. Three persons who are members of the House of Representatives at the time of their appointment, one of whom shall be a licensed attorney regularly representing plaintiffs or a member of a firm that regularly represents plaintiffs, and one of whom shall be a licensed attorney regularly representing defendants or a member of a firm that regularly represents defendants;

b. One physician licensed to practice medicine in North Carolina; and

c. One at-large member representing the general public;

(2) Five members appointed by the President Pro Tempore of the Senate as follows:

a. Three persons who are members of the Senate at the time of their appointment, one of whom shall be a

licensed attorney regularly representing plaintiffs or a member of a firm which regularly represents plaintiffs, and one of whom shall be a licensed attorney regularly representing defendants or a member of a firm which regularly represents defendants;

b. One physician licensed to practice medicine in North Carolina; and

c. One at-large member representing the general public;

(3) The Chief Justice of the Supreme Court of North Carolina or his designee;

(4) The Chief Judge of the North Carolina Court of Appeals or his designee; and

(5) The Attorney General of North Carolina or his designee.

If a vacancy occurs in the membership, the appointing authority shall appoint another person to serve the balance of the unexpired term in the same manner in which the original appointment was made.

Sec. 8.2. The President Pro Tempore of the Senate shall designate one Senator as cochairman, and the Speaker of the House of Representatives shall designate one member of the House of Representatives as cochairman. The cochairmen shall jointly call the first meeting.

Sec. 8.3. The Commission shall study the use of court-annexed arbitration in medical malpractice actions, as described in G.S. 90-21.12, and as a part of its study, the Commission may also consider studies by the American Medical Association, the North Carolina Bar Association Dispute Resolution Committee, and the Duke University Private Adjudication Center, regarding alternate forms of dispute resolution in mediation, conciliation, and other forms of alternate dispute resolution, which might lead to a more expeditious and more economical determination of issues arising in a medical malpractice action than the present system of discovery and jury trial, which has been found to be very time consuming and expensive. The Commission is specifically empowered to study arbitration and other alternate dispute resolution forms which have been implemented or are being considered for implementation in other states of the United States.

Sec. 8.4. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1991 Session of the General Assembly by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Commission may, but is not required to, file its report on or before the first day of the 1990 Budget Session of the 1989 General Assembly, if it can complete its

work and adopt a report requiring filing on or before such date. Upon filing its final report, the Commission shall terminate.

Sec. 8.5. The Commission may meet at any time upon the joint call of the cochairmen. The Commission, with the approval of the Legislative Services Commission, may meet in the Legislative Building or the Legislative Office Building.

Sec. 8.6. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, may assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Commission.

Sec. 8.7. All State departments and agencies shall furnish the Commission with any information in their possession or available to them.

Sec. 8.8. The Commission shall have all powers necessary or convenient to carry out the purposes and provisions of this act, including, but not limited to, the power to receive and accept grants or funds from any public or private agency for, or in the aid of, the purposes of this section, and to receive or accept contributions, from any source, of money, or labor, to be held, used, and applied for the purposes of this act. Any grants or contributions received shall be held by the Legislative Services Commission and these monies received shall be used prior to the use of any available State funds. If grants or contributions are received thereafter, they shall be retained by the Legislative Services Commission in amount equal to State funds already expended.

Sec. 8.9. There is allocated from the funds appropriated to the General Assembly to the Commission created by this Part for its work the sum of $25,000 for the 1989-90 fiscal year and the sum of $25,000 for the 1990-91 fiscal year.

PART IX.-----PROPERTY TAX STUDY COMMISSION

Sec. 9.1. There is established a Property Tax Study Commission. The Commission shall consist of 16 members who are legislators at the time of their appointment and six other members as provided below. The President Pro Tempore of the Senate shall appoint eight members of the Senate, and the Speaker of the House shall appoint eight members of the House of Representatives to serve on the Commission. To aid the Commission in its study of the property tax system, six additional members shall be appointed as

follows: the Speaker of the House shall appoint three members, one of whom is a county commissioner, one a county tax official, and one a citizen representing the public at large; and the President Pro Tempore of the Senate shall appoint three members, one of whom is a county commissioner, one an elected municipal official, and one a citizen representing the public at large. All appointments shall be made in time for the Commission to begin its work by October 1, 1989. The Speaker and the President Pro Tempore of the Senate shall jointly call the first meeting to be held on a date no later than October 1, 1989.

Sec. 9.2. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate one of the legislative members appointed by them as cochairman. Original members appointed shall serve until the Commission makes its final report. Vacancies on the Commission shall be filled in the same manner as the original appointments were made.

Sec. 9.3. The Commission shall make a detailed and comprehensive study of the efficiency, effectiveness, and fairness of the property tax system in North Carolina. The Commission shall examine all classes of property comprising the property tax base; all exemptions, exclusions, and preferential classifications; and the valuation of public service company property to determine whether the property tax system is just and equitable in taxing the citizens of the State. The Commission shall review current procedures for listing and collecting taxes on personal and real property to determine how to increase the efficiency and equity of these procedures. The Commission shall examine the octennial revaluation system and evaluate the feasibility of any programs that would aid the counties in conducting more frequent revaluations.

Sec. 9.4. On or before March 1, 1991, the Commission shall submit a final written report of its recommendations to the General Assembly by filing the report with the Speaker of the House and the President of the Senate. If legislation is recommended, the Commission shall submit appropriate bills with its report. The Commission shall terminate upon filing its final report.

Sec. 9.5. The Commission shall consult with tax officials in State and local government. With the prior approval of the Legislative Services Commission, the Commission may obtain clerical and professional assistance from the Legislative Services Office. The Commission may also obtain assistance from the Department of Revenue.

Sec. 9.6. With the prior approval of the Legislative Services Commission, the Commission shall meet in the State Legislative Building or in the Legislative Office Building.

Sec. 9.7. Commission members who are legislators shall be paid subsistence and travel allowances at the rates established for members of the General Assembly in G.S. 120-3.1. Other Commission members shall be paid subsistence and travel allowances at the rates established in G.S. 138-5.

Sec. 9.8. The expenses of the Commission shall be paid from funds collected by the Department of Revenue under Article 7, Chapter 105 of the General Statutes. The funds expended shall be deducted as in G.S. 105-213(a) for the costs of administering the intangibles tax. Commission expenses shall be limited to a maximum of seventy-five thousand dollars ($75,000).

PART X.-----COMMISSION ON THE FAMILY

Sec. 10.1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12G.

"Commission on the Family.

"§ *120-70.70. Commission established.*

The Commission on the Family is hereby established as a permanent commission. As used in this Article, the term 'Commission' means the Commission on the Family.

"§ *120-70.71. Powers and duties.*

The Commission shall study State government policy and programs affecting the family, specifically addressing family issues from the point of existing laws, governmental programs needed or already functioning, and current family life issues. The Commission shall work in close collaboration with various agencies and programs dealing with the family. Among the issues the Commission may consider studying are the following:

(1) The feasibility of establishing model projects that would be located primarily in low-income, high dropout rate communities in North Carolina:
   a. To teach adults in the family to read; and
   b. To provide after school care for school-aged children using volunteers who could be retirees in the provision of services;

(2) The fiscal impact of a cash stipend created by a tax deduction or by industry dollars to promote literacy or the obtainment of a General Education Development Degree for persons who are presently illiterate or outside the school system;

(3) The need for day care for children and senior citizens, an increase in Aid to Families with Dependent Children payments and eligibility requirements, coordination of State

law with federal welfare reform programs, in-home services for the elderly, additional funding for adult day care, and incentives for industries to develop day care programs;

(4) The relationship between the decline of real income and the tax structure, college tax credits, the minimum wage, and welfare support systems;

(5) The State's efforts in the areas of adolescent pregnancy and teaching about adolescent sexuality;

(6) A comprehensive review of State and federal programs encouraging business and industry to provide adequate child care for their employees;

(7) An analysis of what the State is currently doing to encourage North Carolina businesses and industry to provide adequate child care for their employees;

(8) A survey of North Carolina employers that presently provide child care options for their employees and what types of options they provide;

(9) A comprehensive study of the types of tax incentives and other incentives that would encourage North Carolina businesses--especially those that have 50 or more employees--to either provide on-site child care facilities or provide other child care options and the cost to the State of these tax incentives;

(10) Recommendations of what the State could be doing to encourage North Carolina businesses to provide on-site child care facilities or other child care options for their employees;

(11) Recommendations of a comprehensive policy for North Carolina to encourage businesses within the State to provide on-site child care facilities or other child care options for their employees; and

(12) The concept of requiring coverage of child health supervision services in all health insurance policies sold or delivered within the State;

(13) The issue of domestic violence; and

(14) The problem of suicide among the youth of the State.

"§ *120-70.72. Membership; cochairmen; vacancies.*

The Commission shall consist of 14 members, as follows:

(1) The Secretary of Human Resources or his designee;

(2) The Superintendent of Public Instruction or his designee;

(3) Three members of the House of Representatives appointed by the Speaker of the House;

(4) Three members of the Senate appointed by the President Pro Tempore of the Senate;

(5) Two members at-large appointed by the Speaker of the House;

(6) Two members at-large appointed by the President Pro Tempore of the Senate; and

(7) Two members at-large appointed by the Governor.

Vacancies shall be filled in the same manner as the initial appointments.

The Commission shall have its initial meeting no later than October 1, 1989, at the call of the Speaker of the House and the President Pro Tempore of the Senate. The Speaker of the House and the President Pro Tempore shall each appoint a cochairman from the membership of the Commission. The membership shall meet upon the call of the cochairmen.

"§ *120-70.73. Compensation and expenses of members.*

The Commission members shall receive no salary for serving but shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable.

"§ *120-70.74. Additional powers.*

The Commission may hold public meetings across the State to solicit public input with respect to the issues of the family.

The Commission shall have authority to obtain information and data from all State officers, agents, agencies, and departments while in the discharge of its duties, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly. The Commission shall have the authority to call witnesses, compel testimony relevant to any matter properly before the Commission, and subpoena relevant records and documents. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this section, the subpoena shall also be signed by the cochairmen of the Commission. Any cost of providing information to the Commission not covered by G.S. 120-19.3 may be reimbursed by the Commission from funds available for the Commission's work.

The Commission shall report its findings and recommendations to the General Assembly and the Governor no later than February 1 of each odd-numbered year.

"§ *120-70.75. Staffing.*

At the request of the Commission, the Legislative Services Commission may supply members of the staff of the Legislative Services Office and clerical assistance to the Commission as it deems appropriate. The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building."

Sec. 10.2. There is allocated from the funds appropriated to the General Assembly to the Commission on the Family for its work the sum of $25,000 for the 1989-90 fiscal year and the sum of $25,000 for the 1990-91 fiscal year.

Sec. 10.3. Article 12B of Chapter 120 of the General Statutes is repealed. Funds appropriated to the Commission on Children and Youth are transferred to the Commission on the Family.

PART XI.-----STATE INFRASTRUCTURE AND LOCAL GOVERNMENT NEEDS STUDY COMMISSION

Sec. 11.1. The State Infrastructure Needs and Financing Study Commission is created. The Commission shall:

(1) Undertake a comprehensive review and analysis of the impact upon community service facilities of any new development, construction, or installation that requires any permit, certification, or other governmental or quasi-governmental action allowing real property development and that generates or tends to generate the need for new, expanded, or improved community service facilities. For purposes of this study, the term "community service facilities" means public facilities or improvements provided or established by a local government, including those provided or established by a local government jointly with other units of government or government agencies, whether local, State, or federal. The term includes utility facilities, transportation facilities, parks and recreation facilities, drainage and water quality facilities, streets and sidewalks, open spaces, emergency and public safety facilities, sewer treatment facilities, and waste disposal facilities, but does not include public educational facilities such as schools, technical institutions, community colleges, and similar facilities;

(2) Undertake a comprehensive review and analysis of the various methods by which local governments both within North Carolina and within other states, as deemed appropriate by the Commission, fund the costs of expanded, new, or improved community service facilities;

(3) Determine the most equitable and appropriate means for local governments to obtain funds to provide the new, expanded, or improved community service facilities needed because of the real property development described in subdivision (1). The Commission shall, in making this determination, consider and analyze all practical, legal

funding means which are, or which constitutionally could be, available to local governments;

(4) Study State financial support of local government functions, including the following:
   a. A review of the extent to which the State provides financial support to or for the benefit of local governments;
   b. A review of the history of State policies that have influenced the State's support of local governments;
   c. Identification of local functions that should be subsidized by the State and determination of the extent of State support that would be appropriate;
   d. Recommendation of a viable, reasonable, and balanced State policy on State support of local government functions for the remainder of this century; and
   e. Recommendations for further consideration by other commissions regarding sources of revenue and methods of generating revenue to meet the State's obligations for State funding or joint State-local funding of local government functions;

(5) Study the need for additional local government revenue sources to supplement the property tax, local sales and use taxes, and other existing revenue sources;

(6) Review recent changes in federal and State law that have reduced financial assistance to local governments, created needs for increased expenditures, and restricted the property tax base;

(7) Undertake a comprehensive review of State and local functional and funding responsibilities for services provided by State and local government units in North Carolina;

(8) Make a comprehensive review of sources of funding local government units in North Carolina;

(9) Study the system under which local units are dependent on the State for authorization of changes in local revenue sources;

(10) Analyze the impact of federal legislation since 1981 and potential federal legislation on the fiscal outlook of the State and local government units;

(11) Analyze the methods and formulas used in providing State financial assistance to local government units, including reimbursement for local tax changes;

(12) Analyze the relationship between the State and local budget cycles;

(13) Review the process by which local fiscal impact information is presented during the State budget process; and

(14) Discuss the merits of establishing a permanent advisory commission comprised of State and local elected officials and private citizens that would continually review State and local fiscal relationships.

Sec. 11.2. The Commission shall consist of 20 members to be appointed as follows:

(1) Five members of the Senate appointed by the President Pro Tempore of the Senate, one of whom shall be designated cochair;

(2) Five public members appointed by the President Pro Tempore of the Senate, one of whom shall be an elected city government official, one of whom shall be from the land use planning department or agency of a city, and two of whom shall be persons who are involved with or have had extensive experience in land development;

(3) Five members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom shall be designated cochair; and

(4) Five public members appointed by the Speaker of the House of Representatives, one of whom shall be an elected county government official, one of whom shall be from the land use planning department or agency of a county, and two of whom shall be persons who are involved with or who have had extensive experience in land development.

Sec. 11.3. Members appointed to the Commission shall serve until the Commission makes its final report. Vacancies on the Commission shall be filled in the same manner as the original appointments were made.

Sec. 11.4. Upon request of the Commission or its staff, all State departments and agencies and all local government departments and agencies shall furnish to the Commission or its staff any information in their possession or available to them.

Sec. 11.5. The Commission may submit an interim report of its findings and recommendations and the status of its review and analyses to the General Assembly on or before the first day of the 1990 Regular Session of the 1989 General Assembly. The Commission shall submit the final report of its findings and recommendations to the General Assembly on or before January 15, 1991. All reports shall be submitted by filing the report with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Commission shall terminate upon filing its final report.

Sec. 11.6. The Commission shall meet upon the call of the cochairs.

Sec. 11.7. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

Sec. 11.8. Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

(1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1.

(2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6.

(3) All other Commission members at the rate established in G.S. 138-5.

Sec. 11.9. There is allocated from the funds appropriated to the General Assembly to the State Infrastructure and Local Government Needs Study Commission for its work the sum of $30,000 for the 1989-90 fiscal year and the sum of $25,000 for the 1990-91 fiscal year.

PART XII.-----JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE

Sec. 12.1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12F.

"Joint Legislative Commission on Seafood and Aquaculture.

"§ *120-70.60. Committee established.*

The Joint Legislative Commission on Seafood and Aquaculture is hereby established as a permanent joint committee of the General Assembly. As used in this Article, the term 'Commission' means the Joint Legislative Commission on Seafood and Aquaculture.

"§ *120-70.61. Membership; cochairmen; vacancies; quorum.*

The Joint Legislative Commission on Seafood and Aquaculture shall consist of eleven members: three Senators appointed by the President Pro Tempore of the Senate; three Representatives appointed by the Speaker of the House of Representatives; three members appointed by the Governor; and two members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their

appointing officer. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. Vacancies occurring on the Commission shall be filled in the same manner as initial appointments. A quorum of the Commission shall consist of six members.

"*§ 120-70.62. Powers and duties.*

The Commission shall have the following powers and duties:

(1) To monitor and study the current seafood industry in North Carolina including studies of the feasibility of increasing the State's production, processing, and marketing of seafood;

(2) To study the potential for increasing the role of aquaculture in all regions of the State;

(3) To evaluate the feasibility of creating a central permitting office for fishing and aquaculture matters;

(4) To evaluate actions of the Marine Fisheries Division of the Department of Environment, Health, and Natural Resources, the Wildlife Resources Commission of the Department of Environment, Health, and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;

(5) To make recommendations regarding regulatory matters relating to the seafood and aquaculture industries including, but not limited to:

a. Increasing the State's representation and decision-making ability by dividing the State between the Atlantic and South Atlantic regions of the National Division of Marine Fisheries; and

b. Evaluating the necessity to substantially increase penalties for trespass and theft of shellfish and other aquaculture products;

(6) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the seafood and aquaculture industries;

(7) To review existing and proposed State law and rules affecting the seafood and aquaculture industries and to determine whether any modification of law or rules is in the public interest;

(8) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and

(9) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, or the Joint Legislative Commission on Governmental Operations, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate.

"§ *120-70.63. Additional powers.*

The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

"§ *120-70.64. Compensation and expenses of members.*

Members of the Commission shall receive per diem and travel allowances in accordance with G.S. 120-3.1 for members who are legislators, and shall receive compensation and per diem and travel allowances in accordance with G.S. 138-5 for members who are not legislators.

"§ *120-70.65. Staffing.*

The Legislative Administrative Officer shall assign as staff to the Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Commission through the Offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Commission.

"§ *120-70.66. Funding.*

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Legislative Commission on Seafood and Aquaculture."

Sec. 12.2. There is allocated from the funds appropriated to the General Assembly to the Joint Legislative Commission on Seafood and Aquaculture for its work the sum of $10,000 for the 1989-90 fiscal year and the sum of $10,000 for the 1990-91 fiscal year.

PART XIII.-----SOCIAL SERVICES STUDY COMMISSION

Sec. 13.1. There is established the Social Services Study Commission, an independent commission, to study public social

services and public assistance in North Carolina and to recommend improvements that will assure that North Carolina has cost-effective, consistently administered public social services and public assistance programs.

Sec. 13.2. The Commission shall consist of 17 voting and four nonvoting members. The Speaker of the House of Representatives shall appoint seven voting members, five of whom shall be House members, one of whom shall be a county commissioner, and one of whom shall be a low-income recipient of social services or public assistance benefits. The President Pro Tempore of the Senate shall appoint seven voting members, five of whom shall be Senators, one of whom shall be a county social services director, and one of whom shall be an advocate for low-income people who is familiar with social services and public assistance programs. The Governor shall appoint three voting members, one of whom shall be the Secretary of Human Resources or a designee, one of whom shall be an officer or director of a private social services agency, and one of whom shall be a business representative who is involved in a local Private Industry Council. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint two nonvoting members who shall be involved in the administration or funding of social services and public assistance programs. Initial appointments shall be made within 30 days following adjournment of the 1989 Session of the General Assembly. Vacancies shall be filled by the official who made the initial appointment using the same criteria as provided by this section.

Sec. 13.3. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a cochair of the Commission from their appointees. The cochairs shall call the first meeting and preside at alternate meetings.

Sec. 13.4. The Social Services Study Commission shall continue to examine the need for improvements in the State's social services system and develop legislation to address those needs. If legislation is enacted directing the Department of Human Resources to develop a Social Services Plan, the Commission may receive status reports on the development of the Plan; upon completion of the Plan, the Commission shall receive and review it. The Commission shall also monitor and review efforts within the Department of Human Resources to (i) plan for the efficient and timely implementation of federal welfare reform provisions, and (ii) simplify public assistance programs by reducing paperwork, developing a consolidated application process, or other means.

Sec. 13.5. The Commission members shall receive no salary for their services but shall receive subsistence and travel expenses in

accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

Sec. 13.6. The Commission may solicit, employ, or contract for professional, technical, or clerical assistance, and may purchase or contract for the materials or services it needs. Subject to the approval of the Legislative Services Commission, the professional and clerical staff of the Legislative Services Office shall be available to the Commission, and the Commission may meet in the Legislative Building or the Legislative Office Building. With the consent of the Secretary of the Department of Human Resources, staff employed by the Department or any of the divisions may be assigned permanently or temporarily to assist the Commission or its staff.

Sec. 13.7. Upon request of the Commission or its staff, all State departments and agencies and all local governmental agencies shall furnish the Commission or its staff with any information in their possession or available to them.

Sec. 13.8. The Commission shall submit a final written report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate before or upon the convening of the 1991 Session of the General Assembly. The Commission shall terminate upon the filing of the report.

Sec. 13.9. There is allocated from the funds appropriated to the General Assembly to the Social Services Study Commission for its work the sum of $25,000 for the 1989-90 fiscal year and the sum of $20,000 for the 1990-91 fiscal year.

PART XIV.-----LEGISLATIVE AND JUDICIAL SALARY STUDY COMMISSION

Sec. 14.1. The Legislative and Judicial Salary Study Commission is created. The Commission shall consist of 15 members appointed by the Governor. No member or former member of the General Assembly or Justice or Judge or former Justice or Judge of the General Court of Justice may serve on the Commission.

Sec. 14.2. The Governor shall designate one member of the Commission as chairman.

Sec. 14.3. The Commission shall study the salaries of the members of the General Assembly and Justices and Judges of the General Court of Justice.

Sec. 14.4. The Commission shall submit a report of its findings and recommendations to the General Assembly on or before the first day the 1989 General Assembly (Regular Session 1990) by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its report, the Commission shall terminate.

Sec. 14.5. The Commission may meet at any time upon the call of the chairman. The Commission may meet, with the approval of the Legislative Services Commission, in the State Legislative Building or the Legislative Office Building.

Sec. 14.6. Members of the Commission shall receive per diem, subsistence and travel expenses as provided by law.

Sec. 14.7. The Commission may contract for professional, clerical, or consultant services. The Governor shall assign professional and clerical staff to assist in the work of the Commission.

Sec. 14.8. When a vacancy occurs in the membership of the Commission, the vacancy shall be filled by the Governor.

Sec. 14.9. All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

Sec. 14.10. There is transferred from the funds appropriated to the Legislative Services Commission for the reserve for studies to the Office of Governor for fiscal year 1989-90 the sum of $20,000 for the expenses of the Commission.

PART XV.-----DEPOSITORY INSTITUTIONS STUDY COMMISSION

Sec. 15.1. The North Carolina Depository Institutions Study Commission is hereby created. The Commission shall consist of 15 voting members and 3 nonvoting members: five Senators appointed by the President Pro Tempore of the Senate; five Representatives appointed by the Speaker of the House; one representative of the North Carolina commercial banking industry appointed by the President Pro Tempore of the Senate; one representative of the North Carolina savings institution industry appointed by the Speaker of the House; one representative of the credit union industry appointed by the President Pro Tempore of the Senate; one representative of the small and minority business community appointed by the Speaker of the House; and one representative of the low-income consumer community appointed by the President Pro Tempore of the Senate. The North Carolina Commissioner of Banks, the Administrators of the Savings and Loan and Credit Union Divisions of the North Carolina Department of Economic and Community Development shall serve as ex officio nonvoting members. All replacement appointments shall be filled in the same manner as initial appointments.

Sec. 15.2. The President Pro Tempore of the Senate shall designate one Senator as cochairman and the Speaker of the House of Representatives shall designate one Representative as cochairman. The cochairmen shall call the initial meeting of the Commission.

Sec. 15.3. The Commission shall study the impact of national developments within the depository institutions industry and what effect, if any, these developments will have upon North Carolina depository institutions. The scope of the study shall include, but not be limited to:

(1) The effect on North Carolina depository institutions, if any, resulting from action by the federal government to restructure the Federal Savings and Loan Insurance Corporation;

(2) The effect on North Carolina depository institutions, if any, resulting from any increased authority which may be granted to the Federal Deposit Insurance Corporation;

(3) The effect on the North Carolina public, if any, if savings institutions were permitted to convert into commercial banks and commercial banks allowed to convert into savings institutions;

(4) The level of competition between financial institutions in North Carolina;

(5) The cost and availability of financial services available through North Carolina financial institutions; and

(6) The desirability, if any, of consolidating North Carolina financial institution regulatory agencies into a single agency.

Sec. 15.4. The Commission may submit an interim report to the General Assembly on or before the convening of its 1990 Session, and shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1991 Session of the General Assembly by the filing of a report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate. The report of the Commission shall summarize the information obtained in the course of its inquiry, set forth any findings and conclusions, and recommend such administrative actions or legislative actions that may be necessary. If legislation is recommended, the Commission shall prepare and submit with its report or reports appropriate bills.

Sec. 15.5. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission may also, subject to the

provisions of G.S. 120-32.02(b), enter into contracts for the provision of technical assistance it finds necessary for the performance of its responsibilities under this Part.

Sec. 15.6. Members of the Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Commission shall be paid the per diem and allowance at the rate set forth in G.S. 138-5.

Sec. 15.7. There is transferred from the funds appropriated to the Banking Commission for the 1989-90 fiscal year to the Legislative Services Commission for the Depository Institutions Study Commission $25,000. The Legislative Services Commission may allocate to the Commission additional funds necessary to enable the Commission to complete its study.

PART XVI.-----LEGISLATIVE STUDY COMMISSION ON WETLANDS PROTECTION

Sec. 16.1. The General Assembly recognizes that North Carolina's wetlands are a valuable and productive resource. Wetlands serve a number of functions which are vital to the public health, safety, and welfare. Wetlands (i) protect the drinking water supply by providing a natural filter for both surface water and groundwater resources; (ii) trap nutrients, sediments, and other pollutants capable of polluting downstream waters; (iii) reduce flood and storm damage, thereby preventing a loss of life and property; (iv) provide shoreline stabilization; (v) provide essential breeding, spawning, nesting and wintering habitat for fish and wildlife, including many species that are of commercial or recreational value; (vi) supplement surface water supplies during drought by gradually releasing stored floodwaters and groundwater; and (vii) serve as a source of timber production which is of great economic value to the State.

The General Assembly recognizes that there is an immediate need to study wetlands protection and to develop a legislative program for the management of activities in wetlands. The goals of the wetlands protection program shall be to preserve wetlands of significant ecological value; to protect and manage wetlands so as to prevent any net loss of their ecological functions; to preserve private property rights; and to simplify and consolidate wetlands regulations. The long-term goal of the program shall be to increase the number and enhance the quality of wetlands in the State.

Sec. 16.2. There is created a Legislative Study Commission on Wetlands Protection. The Commission shall study the desirability and

feasibility of State assumption and adaptation of the federal permitting program under Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977 (33 USC § 1344). The Commission may appoint a subcommittee of its members for purposes of this study. The Commission or subcommittee shall receive and acquire such information, including testimony, as is necessary to determine whether such assumption should be sought and, if so, what procedure should be followed to accomplish such assumption. Additionally, the Commission shall study the necessary elements of a statewide wetlands protection program and shall develop recommendations for legislation to establish a wetlands protection program that will be adequate to preserve wetlands of significant ecological value from unnecessary alteration; to protect and manage wetlands so as to prevent any net loss of the ecological function of wetlands; and to develop a program of economic incentives to encourage wetlands conservation. In developing its recommendations, the Commission shall study:

(1) Classification and regulation of wetlands based on their relative resource values, value to the ecosystems and value for economic development;
(2) Exemptions for agriculture, forestry, and mining activities;
(3) Mitigation of wetlands losses and creation of a mitigation bank to accept donations of property and payments in lieu of actual mitigation;
(4) Positive and negative impacts on wetlands of activities including, but not limited to, drainage, excavation, filling, development, and wildlife habitat improvements; and
(5) Definition and identification of different types of wetlands.

In developing recommendations the Commission, and subcommittee if created, shall obtain and receive public comment on existing and desired wetlands regulation and incentives and protection policies.

Sec. 16.3. The Legislative Study Commission on Wetlands Protection shall consist of 15 members. The President Pro Tempore of the Senate shall appoint five members: three Senators, one landowner, and one commercial fisherman. The Speaker of the House shall appoint five members: three Representatives, one member associated with the homebuilding industry, and one representative of wildlife resources interests. The Governor shall appoint five members: one representative of the mining industry, one representative of agriculture, one representative of an environmental organization, one representative of forestry, and one representative of the Department of Environment, Health, and Natural Resources. The President Pro Tempore of the Senate and the Speaker of the House

shall each designate a cochairman from the membership of the Commission. Appointments shall be made no later than September 1, 1989, and members shall serve until the termination of the Commission.

Sec. 16.4. At the request of the Commission, the Legislative Services Commission may assign professional and clerical staff to assist in the work of the Commission. The Commission may also employ any professional and clerical staff it deems necessary to the performance of its duties. With approval of the Legislative Services Commission, the Commission may meet in the State Legislative Building or Legislative Office Building.

Sec. 16.5. Members of the Commission who are members of the General Assembly shall receive subsistence and travel allowances as provided by G.S. 120-3.1. Members who are State officers or employees shall receive subsistence and travel allowances as provided by G.S. 138-6. All other members shall receive per diem, subsistence, and travel allowances as provided by G.S. 138-5.

Sec. 16.6. The Commission may file a report with the 1989 General Assembly, 1990 Regular Session. Otherwise, the Commission shall file a report with the General Assembly not later than March 1, 1991. The Commission shall terminate upon the filing of its report.

Sec. 16.7. Of the funds appropriated to the General Assembly there is allocated the sum of $15,000 for the 1989-90 fiscal year and the sum of $15,000 for the 1990-91 fiscal year to fund the work of the Commission created by this Part.

PART XVII.-----HEALTH CARE LICENSING STUDY

Sec. 17.1. The North Carolina Study Commission on Aging established by Article 21 of Chapter 120 of the General Statutes may study the need for regulation of agencies not licensed under State statute or certified for Medicare that provide nursing and nurse's aide services to persons at home. The North Carolina Study Commission on Aging may report its findings, including any legislative recommendations, to the 1991 General Assembly. The North Carolina Study Commission on Aging shall conduct this study within the funds already appropriated to it.

PART XVIII.-----MEDICAID RESOURCES LIMIT STUDY

Sec. 18.1. The Department of Human Resources shall study the provisions of the Catastrophic Health Care Act of 1987, in order to determine whether the federal provision that permits states to apply "less restrictive methodologies" to the resource test portion of the eligibility determination process will allow alternatives to current

resource test policies that will simplify the determination process and treat applicants more equitably.

The Department shall make a written report, including any recommendations regarding alternative resource test policies, to the Joint Legislative Commission on Governmental Operations by April 1, 1990. The Department of Human Resources shall conduct this study within the funds already appropriated to it.

PART XIX.-----SUBSTANCE ABUSE TREATMENT AND MEDICAL CARE IN PRISONS STUDY

Sec. 19.1. The Special Committee on Prisons as continued by Resolution 8, Session Laws of 1989, shall study:

(1) The extent to which appropriate treatment and counseling programs exist within our prison system;

(2) The extent to which appropriate treatment programs and facilities exist outside the prison system (residential and nonresidential, for adults and adolescents);

(3) How much in additional fiscal resources would be necessary in order to have adequate programs and facilities inside and outside the State prison system;

(4) The impact -- fiscal and otherwise -- of requiring a person convicted of a criminal offense (felony or misdemeanor) to be evaluated to determine whether he or she is a drug abuser, if:

a. The offense is one in which drugs were involved; or

b. Information is presented, during investigation, prosecution or sentencing that would suggest the defendant is a drug abuser;

(5) The impact, fiscal and otherwise, of requiring a person convicted as described in subdivision (4) of this section -- if he or she receives an active sentence in our State system, or is placed on probation under the jurisdiction of the State system, and if it is determined through the evaluation that he is a drug abuser -- to be subject to the following conditions:

a. While incarcerated (and continuing for a period of time following release, if appropriate), he or she must receive appropriate treatment and counseling; or

b. If there is no active sentence, he or she shall be required to receive appropriate treatment and counseling as a condition of probation;

(6) Whether conditions set out in subdivision (5) of this section would significantly increase the likelihood that the person will become and remain free of drug abuse;

(7) Medical care of prisoners; and

(8) Other related factors and matters.

Sec. 19.2. There is allocated from the funds appropriated to the General Assembly to the Special Committee on Prisons for its work the sum of $10,000 for the 1989-90 fiscal year and the sum of $10,000 for the 1990-91 fiscal year.

PART XX.-----ELIZABETH II CULTURAL ACTIVITIES FACILITY

Sec. 20.1. There is transferred from the funds appropriated to the Legislative Services Commission for the reserve for studies to the Department of Cultural Resources, Division of Archives and History, the sum of $20,000 for the 1990-91 fiscal year for a planning and feasibility study for a cultural activities facility on the Elizabeth II State Historic Site as part of the State Historic Site. The Department of Cultural Resources shall report its findings to the Joint Legislative Commission on Governmental Operations by April 1, 1991.

PART XXI.-----STATE PERSONNEL SYSTEM STUDY COMMISSION

Sec. 21.1. There is created a Study Commission on the State Personnel System to be composed of 15 members: five Senators to be appointed by the President Pro Tempore of the Senate, five Representatives to be appointed by the Speaker of the House, and five public members to be appointed by the Governor. Appointments to the Study Commission shall be made within 30 days subsequent to the adjournment of the General Assembly in 1989. The President Pro Tempore of the Senate and the Speaker of the House shall each designate a cochairman from their appointees. Either cochairman may call the first meeting of the Study Commission. Vacancies shall be filled in the same manner as the original appointments were made.

Sec. 21.2. The Study Commission is authorized to study all aspects of the State personnel system, including the impact of State and local governmental employees retirement benefits increases, the impact of the exemption from State taxes of State, local, federal, and private retirement benefits, and public employees' day care and medical and dental benefits.

Sec. 21.3. With the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. With the prior approval of the Legislative Services Commission, the

Study Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

Sec. 21.4. The Study Commission may submit an interim report of its findings and recommendations and the status of its work on or before the first day of the 1990 Regular Session of the 1989 General Assembly. The Study Commission shall submit a final written report of its findings and recommendations on or before the convening of the 1991 Session of the General Assembly. All reports shall be filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Sec. 21.5. Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

(1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;

(2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6;

(3) All other Commission members, at the rate established in G.S. 138-5.

Sec. 21.6. There is allocated from the funds appropriated to the General Assembly to the Study Commission on the State Personnel System for its work the sum of $25,000 for the 1989-90 fiscal year and the sum of $20,000 for the 1990-91 fiscal year.

PART XXII.-----JUVENILE JURISDICTIONAL AGE, STATUTORY RAPE, AND VIOLENT VIDEOS

Sec. 22.1. The Juvenile Law Study Commission is directed to study, within the funds already appropriated to it, the issues of juvenile jurisdictional age, statutory rape, and sales of violent videos. The Commission shall report its findings and recommendations of its study to the 1991 General Assembly upon its convening.

PART XXIII.-----LICENSING FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS STUDY.

Sec. 23.1. Notwithstanding any other provision of law, the Legislative Committee on New Licensing Boards may meet during the legislative interim and study the issue of licensing boards for professional engineers and land surveyors. Members of the Committee shall be paid subsistence and travel at the rates set forth in G.S. 120-3.1.

PART XXIV.-----STATE MARINE PATROL STUDY

Sec. 24.1. Section 107 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 107. The Joint Legislative Commission on Governmental Operations shall conduct a study of State law enforcement agencies and of other State agencies having law enforcement responsibility. This study shall include:

(1) Consideration of a method to coordinate the activities of these agencies as appropriate and to reduce duplication and overlapping of law enforcement responsibilities, training, and technical assistance among State law enforcement agencies and among other State agencies having law enforcement responsibility;

(2) Examination of the salary grade of all State law enforcement agencies' officers and a determination of whether present salary grades are appropriate; ~~and~~

(3) Determination of whether G.S. 114-13 should be changed to make sworn law enforcement agents of the State Bureau of Investigation exempt from G.S. 126-7 but subject to the same salary classifications, ranges, and longevity pay for services as are applicable to other State employees generally, and whether to increase the agents' salary in an amount corresponding to the increments between steps within the salary range established for the class to which the member's position is assigned by the State Personnel Commission, not to exceed the maximum of each applicable salary ~~range.~~ range; and

(4) Determination of whether to create a State Marine Patrol similar to the State Highway Patrol to patrol the waters of the State.

The Commission may hire outside consultants, if necessary, to assist in its study. The Commission may make an interim report to the 1989 General Assembly, Regular Session 1990, and may make a final report to the 1991 General Assembly."

PART XXV.-----EFFECTIVE DATE

Sec. 25.1. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

RESOLUTIONS

S.J.R. 1 **RESOLUTION 1**

A JOINT RESOLUTION INFORMING HIS EXCELLENCY, GOVERNOR JAMES G. MARTIN, THAT THE GENERAL ASSEMBLY IS ORGANIZED AND READY TO PROCEED WITH PUBLIC BUSINESS AND INVITING THE GOVERNOR TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. A committee of four Senators and four Representatives shall be appointed by the presiding officers of the respective houses to notify His Excellency, Governor James G. Martin, that the General Assembly is organized and is ready to proceed with public business, and to invite him to address a joint session of the Senate and House of Representatives in the Hall of the House of Representatives at 2:00 p.m., Tuesday, January 17, 1989.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of January, 1989.

H.J.R. 165 **RESOLUTION 2**

A JOINT RESOLUTION INVITING THE HONORABLE JAMES G. EXUM, JR., CHIEF JUSTICE OF THE SUPREME COURT, TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Honorable James G. Exum, Jr., Chief Justice of the Supreme Court, is invited to address a joint session of the Senate and House of Representatives in the Hall of the House of Representatives at 2:30 p.m., Wednesday, February 8, 1989.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to James G. Exum, Jr.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of February, 1989.

S.J.R. 220 **RESOLUTION 3**

A JOINT RESOLUTION PROVIDING FOR A JOINT SESSION OR SESSIONS OF THE HOUSE OF REPRESENTATIVES AND THE SENATE TO ACT ON CONFIRMATION OF THE APPOINTMENTS MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION AND TO THE POSITION OF EXECUTIVE DIRECTOR OF THE PUBLIC STAFF AND PROVIDING FOR REVIEW OF THE GOVERNOR'S APPOINTMENTS BY THE HOUSE COMMITTEE ON INFRASTRUCTURE AND THE SENATE COMMITTEE ON COMMERCE.

Whereas, under the provisions of G.S. 62-10 appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly in joint session; and

Whereas, under the provisions of G.S. 62-15 appointments made by the Governor to the position of Executive Director of the Public Staff of the North Carolina Utilities Commission are subject to confirmation by the General Assembly in joint session; and

Whereas, a vacancy has occurred on the North Carolina Utilities Commission because of the resignation of a member whose term would have ended on June 30, 1989; and

Whereas, the seat vacated is also a seat which requires an appointment for the term beginning July 1, 1989, and ending June 30, 1997; and

Whereas, the term of the present Executive Director of the Public Staff of the North Carolina Utilities Commission will end on June 30, 1989; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the name of his appointee to complete the term on the North Carolina Utilities Commission which will expire June 30, 1989, and to fill the term which will begin July 1, 1989, and expire June 30, 1997; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the name of his appointee to fill the term of Executive Director of the Public Staff of the North Carolina Utilities Commission for the term which will begin July 1, 1989, and expire June 30, 1995;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The House Committee on Infrastructure and the Senate Committee on Public Utilities shall, in joint session if they so desire, with the assistance of any subcommittee assigned by either committee chairman, review the appointment of Charles H. Hughes by the Governor to the North Carolina Utilities Commission to complete the term of Commissioner Robert Koger, which expires June 30, 1989, and to serve the subsequent term which will begin July 1, 1989, and expire June 30, 1997, and each committee shall report its recommendations to a joint session of the House of Representatives and the Senate.

Sec. 2. The House Committee on Infrastructure and the Senate Committee on Public Utilities shall, in joint session if they so desire, with the assistance of any subcommittee assigned by either committee chairman, review the appointment of Robert Gruber by the Governor to the position of Executive Director of the Public Staff of the North Carolina Utilities Commission to serve a term which will begin July 1, 1989, and expire June 30, 1995, and each committee shall report its recommendations to a joint session of the Senate and the House of Representatives.

Sec. 3. The House of Representatives and the Senate shall meet in the House Chamber in joint session or sessions on a date or date to be fixed jointly by the Speaker of the House and the President of the Senate, the date of the first such session being not later than March 30, 1989, to receive the reports of their committees, and for the purpose of voting on confirmation of the appointments of the Governor if the two houses deem such action appropriate.

Sec. 4. In any joint session of the House of Representatives and the Senate for the purposes set out in Section 3 of this resolution, the roll of the House shall be called and the vote taken, then the roll of the Senate shall be called and the vote taken on the question of confirmation of Charles H. Hughes to one or both terms, and afterward the vote in each house shall be tabulated and announced. Then the roll of the House shall be called and the vote taken, after which the roll of the Senate shall be called and the vote taken on the question of confirmation of Robert Gruber, and afterward the vote in each house shall be tabulated and announced. Approval of the majority of those present and voting of each house shall be required for each confirmation. The proceedings in the joint session or sessions shall be governed by the rules of the North Carolina Senate insofar as the rules are applicable.

Sec. 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of March, 1989.

S.J.R. 154 **RESOLUTION 4**

A JOINT RESOLUTION PROVIDING THAT THE 1989 GENERAL ASSEMBLY SHALL MEET IN THE CITY OF FAYETTEVILLE IN HONOR OF THE TWO HUNDREDTH ANNIVERSARY OF THE RATIFICATION BY NORTH CAROLINA OF THE UNITED STATES CONSTITUTION.

Whereas, 1989 marks 200 years since the City of Fayetteville served as the provisional capital of North Carolina; and

Whereas, the citizens of Fayetteville have been actively preparing a celebration to honor this historic occasion; and

Whereas, the General Assembly has been invited to participate in various activities on April 12th and 13th in the City of Fayetteville in observance of this historic occasion; and

Whereas, the Army at Fort Bragg will be involved in hosting the General Assembly for this event; and

Whereas, it is only fitting that the General Assembly participate in these activities in honor of the 200th anniversary of the ratification by North Carolina of the United States Constitution;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. On Wednesday, April 12, 1989, the Senate and the House of Representatives shall attend a special armed forces presentation at Fort Bragg and shall also meet in Fayetteville at the State House site on Thursday, April 13, 1989, in honor of the 200th anniversary of the ratification by North Carolina of the United States Constitution. During this time, the Senate and the House of Representatives are also invited to participate in other activities to celebrate this occasion.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of March, 1989.

H.J.R. 392 **RESOLUTION 5**

A JOINT RESOLUTION HONORING THE ONE HUNDREDTH ANNIVERSARY OF THE TOWN OF BLOWING ROCK AND THE MEMORY OF ITS FOUNDERS.

Whereas, the Town of Blowing Rock will be celebrating one hundred years of incorporation on March 11, 1989; and

Whereas, the founders of the Town of Blowing Rock made great contributions to the town; and

Whereas, the Town of Blowing Rock has made significant contributions to the social, cultural, political, and economic prosperity of the State of North Carolina; and

Whereas, the residents of the Town of Blowing Rock are committed to the preservation of their extraordinarily beautiful natural resources so vital to the reputation of the State of North Carolina as a "Variety Vacationland"; and

Whereas, the residents of the Town of Blowing Rock have extended North Carolina hospitality to millions of visitors from across the United States;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly of North Carolina honors the memory of the founders of the Town of Blowing Rock for their significant contributions to the State of North Carolina, and recognizes the residents of the Town of Blowing Rock on the one hundredth anniversary of its founding.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the Town Clerk of the Town of Blowing Rock.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of March, 1989.

H.J.R. 445 **RESOLUTION 6**

A JOINT RESOLUTION HONORING THE FOUNDERS OF ELON COLLEGE AND COMMEMORATING ITS CENTENNIAL.

Whereas, the people of North Carolina are deeply indebted to the North Carolina General Assembly of 1889, and other leaders of a century and more ago whose great vision founded Elon College on March 11, 1889; and

Whereas, James O'Kelly and his coworkers founded the Christian Church in 1794, which joined in forming the United Church of Christ in 1957, through the establishment of said denomination, laid the groundwork for the creation of an institution of higher learning; and

Whereas, the first Board of Trustees elected in September 1888 was comprised of North Carolinians E. A. Moffitt of Asheboro; J. M. Smith of Milton; J. H. Harden of Big Fall; F. O. Moring of Raleigh; the Reverend J. W. Wellons of Franklinton; the Reverend W. S.

Long of Graham; and Dr. G. S. Watson of Union Ridge, each of whom worked tirelessly and contributed sacrificially to ensure the financial and educational stability of the College; and

Whereas, the Reverend Dr. William S. Long accepted the responsibilities as the first president of the College, pledging "to see a first class college equipped and endowed, doing work for the Christian Church and the world...Until that is done, I shall devote all the energy I have to it, and work and pray for it."; and

Whereas, Thaddeus Armie Eure, North Carolina's distinguished senior statesman who served as Secretary of State for 52 years, has also served Elon College with integrity and unprecedented loyalty as a member of the Board of Trustees for 46 years and as chairman of that Board for 34 of those years; and

Whereas, Elon College, its alumni around the world, and its friends and supporters near and far, are celebrating a century of dedicated service by the College to the advancement of knowledge, the economic progress of North Carolina, and the welfare and interests of the people of this State and of humankind; and

Whereas, the College today offers excellent undergraduate education in 32 fields of study and graduate study in two fields, and provides educational opportunity for some 3300 students, fifty percent (50%) of whom are residents of 65 North Carolina counties;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The North Carolina General Assembly recognizes and honors the founders of Elon College for their vision, commends the College for its contributions to North Carolina and its people, extends congratulations on the institution's Centennial Celebration, and looks forward to a second century of service by the College in behalf of the people of North Carolina and the nation.

Sec. 2. The Secretary of State shall send a certified copy of this resolution to Dr. J. Fred Young, the seventh president of Elon College.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of March, 1989.

S.J.R. 368 **RESOLUTION 7**

A JOINT RESOLUTION HONORING ALBERT SCHWEITZER BY PROCLAIMING ALBERT SCHWEITZER WEEK.

Whereas, Dr. Albert Schweitzer was a renowned physician, missionary, theologian, musicologist and organist; and

Whereas, Dr. Schweitzer's dedication to humanity led him to found a hospital in a remote region of Africa, the village of Lambarene; and

Whereas, Dr. Schweitzer's respect for the individual and philosophy of "reverence for life," as the principle to govern all human action, earned him the Nobel Peace Prize in 1952; and

Whereas, this same principle is needed today more than ever before and if practiced by all people would achieve harmony among mankind; and

Whereas, the Albert Schweitzer International Prizes are presented in Wilmington, North Carolina, to honor the memory and keep alive the teachings of this great humanitarian by recognizing men and women worldwide who exemplify Dr. Schweitzer's "reverence for life" in his three areas of expertise of medicine, music and the humanities; and

Whereas, this year's distinguished winners include Beverly Sills, an operatic singer in music; Dr. George Hitchings of Burroughs Wellcome, last year's Nobel Prize winner, in Medicine; and Professor Boris Luben-Plozza of Switzerland, for his teaching the Balint System, a humanitarian medical treatment of the whole patient, in the Humanities; and

Whereas, the Albert Schweitzer International Prizes are the only international prizes of their kind in the world and the first international prizes given in North Carolina, thereby focusing global attention on North Carolina, New Hanover County, the City of Wilmington and the University of North Carolina at Wilmington;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly of the State of North Carolina does hereby proclaim March 19, 1989, through March 23, 1989, as Albert Schweitzer Week and urge all residents to join in honoring this exemplary friend of mankind and the exceptional individuals being honored in his name.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the City of Wilmington.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of March, 1989.

S.J.R. 42 **RESOLUTION 8**

A JOINT RESOLUTION REAUTHORIZING THE SPECIAL COMMITTEE ON PRISONS.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Special Committee on Prisons is reauthorized and shall continue in existence through its final report to the 1989 Session of the 1989 General Assembly or the 1990 Session of the 1989 General Assembly.

Sec. 2. The continued Special Committee on Prisons shall have all the powers and duties of the Special Committee on Prisons as they are necessary to continue its study, to assist in the implementation of the Special Committee recommendations, and to plan further activity on the subject of its study.

Sec. 3. The members of the Special Committee on Prisons shall be eight members of the Senate, appointed by the President Pro Tempore, and eight members of the House of Representatives, appointed by the Speaker of the House. The members shall receive compensation and expenses pursuant to G.S. 120-3.1.

Sec. 4. Nothing in this resolution shall be construed to obligate the General Assembly to make appropriations to implement the provisions of this resolution.

Sec. 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of March, 1989.

S.J.R. 839 **RESOLUTION 9**

A JOINT RESOLUTION HONORING THE LIVES OF THE MANY REVOLUTIONARY PATRIOTS WHO DIED SO THAT THE COLONIES COULD BE FREE TO ENACT A CONSTITUTION AND BILL OF RIGHTS GUARANTEEING OUR BASIC FREEDOMS AND RIGHTS.

Whereas, in 1787 the Federal Convention met in Philadelphia, Pennsylvania, to amend the Articles of Confederation, but instead, after extended debate, drew up a new Constitution of the United States for the 13 former colonies, signed by three of the five delegates sent by North Carolina on September 17, 1787; and

Whereas, after the Constitution was signed it was submitted to the states for ratification and the General Assembly called for a convention to meet in 1788 at Hillsborough to vote on this new Constitution; and

Whereas, after nine other states had ratified the Constitution of the United States, the North Carolina Convention convened on July 21, 1788, and after 11 days of spirited debate, the delegates voted 184 to 83 to "neither reject nor ratify the Constitution" and proposed instead that a Declaration of Rights and Amendments be added to the Constitution prior to ratification; and

Whereas, North Carolina's appeal for amendments to the Constitution made during the Hillsborough Convention unquestionably contributed to Congress' early submission of amendments to the Constitution to the states--the amendments which would become known as the Bill of Rights guaranteeing our most cherished basic rights and liberties; and

Whereas, knowing that the Bill of Rights had been drafted and would be submitted to the states for ratification, a second North Carolina Convention was convened on November 16, 1789, and after only five days of debate ratified the Constitution of the United States by a vote of 197 to 77;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the lives and memories of the revolutionary patriots whose actions and deeds enabled the 13 colonies to free themselves of the yoke of oppression and draft and ratify the Constitution of the United States and the Bill of Rights.

Sec. 2. The General Assembly commemorates the North Carolina Convention which met on November 16, 1789, in Fayetteville, North Carolina, and ratified the Constitution of the United States on November 21, 1789.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1989.

S.J.R. 867 **RESOLUTION 10**

A JOINT RESOLUTION MEMORIALIZING THE LIFE AND MEMORY OF PRIVATE FIRST CLASS BRYANT HOMER WOMACK AND URGING THE DEPARTMENT OF THE ARMY TO ESTABLISH A NEW MEDICAL CENTER IN CUMBERLAND COUNTY IN HIS HONOR.

Whereas, Private First Class Bryant Homer Womack, a citizen of North Carolina, was killed during the Korean Conflict; and

Whereas, because of his conspicuous bravery, Private First Class Bryant Homer Womack was awarded, posthumously, the Congressional Medal of Honor, the nation's highest military award; and

Whereas, the inscription on his Medal of Honor dramatically describes his exceptional bravery saying:

PFC Womack, Army Medical Service, United States Army, a member of the Medical Company, 14th Infantry Regiment, 25th Infantry Division, distinguished himself by conspicuous gallantry above and beyond the call of duty in action against the enemy on 12 March 1952 near Soksori, Korea.

PFC Womack was the only medical aidman attached to a night combat patrol when sudden contact with a numerically superior enemy produced numerous casualties. PFC Womack went immediately to their aid, although this necessitated exposing himself to a devastating hail of enemy fire, during which he was seriously wounded.

Refusing medical aid for himself, he continued moving among his comrades to administer aid. While he was aiding one man, he was struck again by mortar fire, this time suffering the loss of his right arm. Although he knew the consequences should immediate aid not be administered, he still refused aid and insisted that all efforts be made for the benefit of others who were wounded.

Unable to perform the task himself, he remained on the scene and directed others in first aid. The last man to withdraw, he walked until he collapsed from the loss of blood and died a few minutes later while being carried by his comrades.

The extraordinary heroism, outstanding courage and unswerving devotion to duty displayed by PFC Womack reflect the utmost distinction on himself and uphold the esteemed traditions of the United States Army;

and

Whereas, the Army, in honor of the heroism of PFC Womack, built a hospital, on Fort Bragg in Cumberland County, and named it in his honor; and

Whereas, the Department of the Army plans to construct a new hospital at Fort Bragg, North Carolina; and

Whereas, the United States Army Health Services Command has studied the concept of establishing a medical center at Fort Bragg; and

Whereas, a medical center would improve medical services by expanding residency programs and increasing the number and specialties of available physicians; and

Whereas, Fort Bragg is assigned a preeminent role in contingency requirements for national defense; and

Whereas, the needs of Fort Bragg and the entire military community of North Carolina would be best served by a medical center; and

Whereas, the expanded medical center would be a fitting tribute to the continuing memory of the gallantry of PFC Womack, after whom the new medical center would be named;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Department of the Army is urged to take whatever action is necessary to ensure that a medical center is built at Fort Bragg.

Sec. 2. The General Assembly urges that the new medical center be named in honor of Private First Class Bryant Homer Womack in a continuing tribute to the gallantry of this native of North Carolina.

Sec. 3. The Secretary of State shall transmit a certified copy of this Resolution to the Secretary of the Army; the Surgeon General of the United States Army; to each member of the United States Congress representing North Carolina; and to each member of the House and Senate Armed Services Committees of the United States Congress.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1989.

H.J.R. 1047 **RESOLUTION 11**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WILLIAM RICHARDSON DAVIE FOR HIS ACTIONS IN ESTABLISHING THE UNIVERSITY OF NORTH CAROLINA.

Whereas, the General Assembly met in Fayetteville for its annual session from November 2 through December 22 of 1789; and

Whereas, during this session of the General Assembly, William Richardson Davie introduced a bill to establish The University of North Carolina; and

Whereas, on December 11, 1789, The University of North Carolina, the first state university in the United States, was chartered;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly wishes to honor the life and memory of William Richardson Davie and to congratulate the General Assembly that met in Fayetteville during 1789, and chartered The University of North Carolina.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1989.

H.J.R. 1113 **RESOLUTION 12**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF HUBERT WILLIS.

Whereas, Hubert Willis was born on a farm in Bladen County on May 17, 1908; and

Whereas, Hubert Willis was the son of Forney and Carolina Rebecca Parker Willis; and

Whereas, Hubert Willis is a descendent of James Gillespie, who was a Revolutionary War Hero and member of the Third, Fourth, Fifth, and Eighth Congress of the United States, and who laid out the city of Fayetteville; and

Whereas, Hubert Willis attended a one-room, one-teacher school for seven years and was graduated from Bladenboro High School, where he was Valedictorian in 1926; and

Whereas, Hubert Willis attended North Carolina State College from 1926 to 1928; and

Whereas, Hubert Willis farmed in Bladen County from 1926 until 1934; and

Whereas, Hubert Willis trained with the Soil Erosion Service, the forerunner of the Soil Conservation Service from 1934 to 1935; and

Whereas, Hubert Willis reentered North Carolina State College in 1939 and graduated in 1942 with a B.S. degree in Field Crops and Plant Breeding; and

Whereas, Hubert Willis was elected president of the Y.M.C.A. in 1940 and to Alpha Zeta, a national honor agriculture fraternity, as well as to the Blue Key and the Golden Chain, local leadership fraternities; and

Whereas, in 1942, Hubert Willis became a soil conservationist in Shelby with the Soil Conservation Service; and

Whereas, Hubert Willis served as a work unit conservationist in Yadkinville, from 1943 to 1945; in Elkin, from 1945 to 1955; and in Cumberland County with the Cumberland Soil and Water Conservation District from 1955 to 1968; and

Whereas, Hubert Willis devoted his life to soil and water conservation, as is shown by his activities, including his election as Soil Conservation District Supervisor in Cumberland County in 1972; his three-time service as counselor for the annual workshop of the North Carolina Association of Soil Conservation Districts; as counselor for the Boy Scouts Conservation Merit Badge; his service to local Future Farmers of America classes; his teaching conservation and weed identification at summer camp; his role in organizing the Flea Hill Watershed Project in Cumberland County; and his conservation news articles; and

Whereas, Hubert Willis served as president of the State chapter of the Soil Conservation Service of America; and

Whereas, during his life time, Hubert Willis received numerous awards and recognitions, including the Certificate of Merit from the United States Department of Agriculture, in 1963, 1965, and 1967; a Certification of Appreciation from the Agriculture Stabilization and Conservation Service in 1967; the Outstanding Service Award from the Soil Conservation Society of America in 1982; the Distinguished Service Award for Outstanding Conservation Work from Cumberland County; the outstanding Leadership and Support of Agriculture Award in Cumberland County, presented by the Fayetteville Area Chamber of Commerce in 1987; and an award from the Young Democrats in 1984; and

Whereas, Hubert Willis was an active member of his community by his memberships in the Fayetteville Kiwanis Club, the Gideons, the Cape Fear Chapter of the National Association of Retired Federal Employees; the Board of Lay activities of the North Carolina Conference Methodist Church; and the Haymouth Methodist Church; and

Whereas, Hubert Willis married Eutha Neighbors of Forest City in 1943; and

Whereas, Hubert Willis leaves to mourn his wife; his daughter, Rebecca Spade; and one granddaughter, Elizabeth Rebecca Spade;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of Hubert Willis for his work in soil and water conservation and expresses its sympathy to his family and friends and particularly to the citizens of the City of Fayetteville.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Hubert Willis.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1989.

H.J.R. 1114 **RESOLUTION 13**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CHARLES EDWARD "CHARLIE" JONES, SR., "MR. DEMOCRAT".

Whereas, Charles Edward "Charlie" Jones, Sr., was born on June 2, 1890, in St. Pauls; and

Whereas, Charles Edward "Charlie" Jones, Sr., was the third son of Charles Wesley and Mary Frances Smith Jones; and

Whereas, Charles Edward "Charlie" Jones, Sr., moved to Cumberland County in 1919; and

Whereas, Charles Edward "Charlie" Jones, Sr., was a farmer and family man who loved his church and devoted himself to many civic and political activities; and

Whereas, Charles Edward "Charlie" Jones, Sr., was a member of the Camp Ground Methodist Church for 56 years and served his church in numerous capacities, including his lifetime membership in the United Methodist Men; membership on the administrative board for more than 50 years; as lay leader; as president of the men's bible class; as a delegate to the annual North Carolina Methodist Conference; as a district steward in the Fayetteville Methodist District; and

Whereas, Charles Edward "Charlie" Jones, Sr., was honored by the North Carolina Annual Conference of the United Methodist Church at Methodist College on his 90th birthday; and

Whereas, Charles Edward "Charlie" Jones, Sr.'s civic activities included his service as director of the Cumberland County United Fund, for the Polio Chapter, Tuberculosis Association and Red Cross; his service as president of the Cumberland County Farm Bureau; his membership in former Governor Scott's Traffic Safety Council in 1950; his appointment by President Kennedy to the Selective Service Appeal Board for eastern North Carolina; and his membership in the Seventy-First Ruritan Club; and

Whereas, Charles Edward "Charlie" Jones, Sr., was a lifelong worker for the Democratic Party; and

Whereas, Charles Edward "Charlie" Jones, Sr., was a member of the Cumberland County Democratic Executive Committee and served more than 20 years as chairman of the executive committee of Beaver Lake Precinct/Seventy-First Township; and

Whereas, Charles Edward "Charlie" Jones, Sr., was better known in Fayetteville as "Mr. Democrat"; and

Whereas, shortly before his death, Charles Edward "Charlie" Jones, Sr., said, "If I could talk to those young Democrats one more time, I would tell them to be loyal to their party. There may be things sometimes they may not like, don't criticize, just recognize there needs to be improvement, or change, and work hard to make your party the best party. It is good to have a two-party system, so you will always be aware you have to keep the Democrats the best."; and

Whereas, Charles Edward "Charlie" Jones, Sr., also loved his fellowman and said, "I believe in the dignity of mankind; that government should serve all men, not just a privileged few."; and

Whereas, Charles Edward "Charlie" Jones, Sr., died on January 12, 1982;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly wishes to honor the life and memory of Charles Edward "Charlie" Jones, Sr., and expresses the gratitude and appreciation of this State and its citizens, particularly of the people of Cumberland County, for his life and service to North Carolina.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Charles Edward "Charlie" Jones, Sr.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1989.

H.J.R. 1138 **RESOLUTION 14**

A JOINT RESOLUTION HONORING EZEKIAL E. SMITH.

Whereas, Ezekial E. Smith (1852-1933) was born a black in the midst of slavery but early threw off the bonds of oppression, secured his own education, and entered into a long life of service to his fellow man; and

Whereas, as a churchman and religious leader he served more than 50 years as pastor, State denominational leader, and inspired preacher, especially as pastor of First Baptist Church in Fayetteville, E.E. Smith was instrumental in, as he once said, "increasing the knowledge and love of the Lord" in thousands of the faithful in several generations of North Carolinians; and

Whereas, E.E. Smith served for 50 years as principal and president of the State Normal School in Fayetteville, setting a record

of service unequaled in education in North Carolina, tirelessly working for the education of generations of North Carolina schoolteachers, pressing the General Assembly for appropriations, dealing with Governors and budget officers, at times spending his own resources for land and buildings, holding forth the vision of an educated people as the best promise of better tomorrows; and

Whereas, through his zeal for better education, Dr. E.E. Smith set an example and gave heart to others, such as Dr. Alexander Graham, Charles Brantley Aycock, and Dr. J.W. Seabrook, who took up the cause of the children of North Carolina, both black and white; and

Whereas, E.E. Smith was called at times to State and national service, demonstrating the breadth of his intellect, wisdom, character, and administrative skill as U.S. minister to Liberia and as lieutenant colonel of the Third North Carolina Volunteer Regiment during the Spanish-American War; and

Whereas, E.E. Smith stood boldly for equality and hope for the black people of North Carolina in a period when discrimination and bigotry were commonplace, insisting that black men be allowed to form their own military units, that black schoolteachers receive equal pay, that black voters should be allowed the full benefits of the ballot box; and

Whereas, notwithstanding his courage and candor as a spokesman for his people, he also had the respect, the support, and lifelong friendship of North Carolinians of all groups and all creeds; and

Whereas, the monument to Dr. E.E. Smith on the campus of Fayetteville State University truthfully lists his contributions as: "Educator, Diplomat, Soldier, Clergyman, and Apostle of Interracial Goodwill"; and

Whereas, Dr. E.E. Smith lived in the spirit and the promise of the Constitution and Bill of Rights of the United States of America;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory and commends the life and service of Dr. E.E. Smith of Fayetteville as a distinguished and beloved son of North Carolina.

The General Assembly urges that the people of North Carolina take to heart the qualities of mind, character, and spirit that made Dr. E.E. Smith a hero of his times.

The General Assembly offers the heritage of the life of Dr. E.E. Smith as a bicentennial remembrance in the best tradition of the Constitution and Bill of Rights.

Sec. 2. This resolution is effective upon ratification.

H.J.R. 1140 **RESOLUTION 15**

A JOINT RESOLUTION HONORING HENRY EVANS.

Whereas, Henry Evans, 1760-1810, a free black shoemaker and licensed Methodist preacher of Virginia, traveled through the little village of Fayetteville in the late eighteenth century and recognized a place where the field was ripe unto harvest; and

Whereas, Henry Evans settled in Fayetteville, built a small church sanctuary long known as "the slab Chapel", the first structure in the town erected specifically for worship, and soon became, to quote a denominational observer, "the best preacher of his time in that quarter"; and

Whereas, Henry Evans was so remarkable a preacher that Bishop Francis Asbury, who visited the slab Chapel several times, was told that "distinguished visitors hardly felt that they might pass a Sunday in Fayetteville without hearing him preach"; and

Whereas, Henry Evans advanced a message of Biblical authority so appealing to his black listeners that slave owners at times drove him into the sandhills, where he continued to deliver clandestine sermons, and forced him to swim the icy Cape Fear River in order to reach his flock; and

Whereas, Henry Evans grew to become a respected and widely acclaimed preacher and townsman with a wide following among free and slave; and

Whereas, upon his death, Henry Evans deeded the lot and church to the Methodist Church, and was buried under the chancel of a later chapel built on the site; and

Whereas, the church which Henry Evans founded was the mother church of Methodism in Cumberland County, and after the Civil War of much of the African Methodist Episcopal Church in North Carolina; and

Whereas, the example of the life of Henry Evans raised a standard of conduct and courage for black people in Fayetteville in the times of slavery and afterwards; and

Whereas, the church which he founded has since become a sanctuary of spiritual growth and a birthplace of community leadership for several generations, enhancing the religious, educational, political, and social life of North Carolina; and

Whereas, that in welcoming the North Carolina General Assembly to Fayetteville, the community offers the life and service of Henry Evans as an example of the best of its sons and daughters through the more than 230 years since its beginning;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. That the spirit and character of Henry Evans, free black preacher and staunch apostle of hope, be commended to the people of North Carolina as a beacon light embodying the true meaning of the freedoms and guarantees contained in the Constitution and Bill of Rights of the United States of America.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1989.

H.J.R. 803 **RESOLUTION 16**

A JOINT RESOLUTION SETTING THE DATE FOR THE HOUSE OF REPRESENTATIVES AND SENATE TO ELECT MEMBERS TO THE STATE BOARD OF COMMUNITY COLLEGES.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. Pursuant to G.S. 115D-2.1(b)(4)f., the House of Representatives and the Senate shall elect members to the State Board of Community Colleges during the regular sessions of the two houses held on Tuesday, April 18, 1989. At that time the House of Representatives shall elect one member to the State Board for a term of six years beginning July 1, 1989; the Senate shall elect one member to the State Board for a term of six years beginning July 1, 1989.

Sec. 2. Each house shall follow the procedure set out in G.S. 115D-2.1 for nomination and election of members of the State Board.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of April, 1989.

H.J.R. 1331 **RESOLUTION 17**

A JOINT RESOLUTION HONORING THE MEMORIES OF MILTON J. ROSENAU, EDWARD G. MCGAVRAN, W. FRED MAYES, AND BERNARD G. GREENBERG, FORMER DEANS OF THE SCHOOL OF PUBLIC HEALTH AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL ON THE SCHOOL'S FIFTIETH ANNIVERSARY.

Whereas, The University of North Carolina at Chapel Hill's School of Public Health was first authorized to award academic

degrees in 1939 and is now celebrating 50 years of service to the State, the nation and the world; and

Whereas, Milton J. Rosenau, Edward G. McGavran, W. Fred Mayes, and Bernard G. Greenberg served as deans during the School's 50-year history and should be recognized for their service and contributions to the School; and

Whereas, the School of Public Health was the first State-supported School of Public Health in the United States, and is the only School of Public Health in North Carolina; and

Whereas, today the School is one of the top ranking schools of the 24 accredited schools of public health in the nation; and

Whereas, the mission of the School is to advance and apply scientific knowledge to the understanding and promotion of the public's health; and

Whereas, the School grants degrees to more than 350 students each year to work as health professionals in the fields of biostatistics, environmental health, epidemiology, health behavior and health education, health policy and administration, maternal and child health, nursing, nutrition, and parasitology; and

Whereas, the School offers academic outreach programs to practicing health professionals seeking to further their careers through the east and west off-campus degree programs in North Carolina and through the regional degree program; and

Whereas, the School has granted degrees to more than 6,000 health professionals over the course of 50 years; and

Whereas, almost 2,000 of those health professionals work in the State of North Carolina; and

Whereas, the School is a professional school charged by the State to enhance and maintain skills of health practitioners to remain current in their professional practice; and

Whereas, the School offers more than 150 continuing education courses each year to an average of 5,000 health professionals from 90 North Carolina counties; and

Whereas, the faculty of the School provide technical expertise and assistance to state, national, and international organizations; and

Whereas, last year 139 faculty members of the School provided more than 8,500 hours of service to North Carolina through 451 projects in 39 counties; and

Whereas, the School conducts basic and applied research to enhance the professional and technical fields which make up public health; and

Whereas, such research specifically addresses high priority North Carolina problems, which include: studies of high blood pressure control and heart disease conducted in 13 counties in the State; an

assessment of comprehensive stroke programs in 15 counties; a study of the relationship between drinking water quality and colon cancer, using information from 100 public water supply agencies in the State; an evaluation of infant mortality programs around the State and the establishment of a Performance Based Evaluation System for high risk infants; an analysis of mercury content in seven North Carolina streams; studies of population exposures to chemical contaminants in unprotected surface water and groundwater supplies; and studies of radon in North Carolina homes;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly of North Carolina wishes to honor the memories of Dean Milton J. Rosenau, Dean Edward G. McGavran, Dean W. Fred Mayes, and Dean Bernard G. Greenberg and wishes to express its appreciation for their contributions and dedication to the School of Public Health at The University of North Carolina at Chapel Hill.

Sec. 2. The General Assembly of North Carolina wishes to commemorate the School of Public Health at The University of North Carolina at Chapel Hill on its 50th anniversary for its outstanding contributions and 50 years of continuous service to the State of North Carolina, the nation and the world.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the current Dean of the School of Public Health at The University of North Carolina at Chapel Hill and to the families of Milton J. Rosenau, Edward G. McGavran, W. Fred Mayes, and Bernard G. Greenberg.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of April, 1989.

S.J.R. 866 **RESOLUTION 18**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF OTTIS FRANKLIN JONES, FORMER SHERIFF OF CUMBERLAND COUNTY.

Whereas, Ottis Franklin Jones was born on December 29, 1931, in the town of Erwin; and

Whereas, Ottis Franklin Jones was raised in Erwin and attended Erwin High School; and

Whereas, Ottis Franklin Jones moved to Cumberland County and joined the sheriff's department in September 1953; and

Whereas, Ottis Franklin Jones was appointed sheriff in 1972; and

Whereas, in 1974, Ottis Franklin Jones ran for sheriff and was elected to a four-year term of office by defeating his opponents by a very comfortable margin; and

Whereas, in 1978, Ottis Franklin Jones was reelected sheriff by carrying every single precinct in the county and defeating four opponents by taking sixty-eight percent (68%) of the vote; and

Whereas, Ottis Franklin Jones was reelected as sheriff in 1982 and 1986 and was unopposed in both elections; and

Whereas, Ottis Franklin Jones was instrumental in working towards the North Carolina Sheriffs' Association becoming more involved in statewide legislation that provided more and better quality law enforcement for the citizens of the 100 counties throughout the State in the 1970's; and

Whereas, Ottis Franklin Jones served the North Carolina Sheriffs' Association in many capacities, including Second Vice-President from 1979 to 1980; First Vice-President from 1980 to 1981; President from 1981 to 1982; Chairman from 1982 to 1983; and member of the Executive Committee from 1983 to 1987; and

Whereas, Ottis Franklin Jones promoted the formation of the North Carolina Sheriffs' Training and Standards Commission, which allowed the sheriffs of North Carolina to devise training courses which are geared directly to the type of law enforcement duties performed by deputies, and was elected chairman in 1984 and served in that position until 1987; and

Whereas, Ottis Franklin Jones was the first sheriff in North Carolina to establish a platoon of motorcycles for use in providing escorts, special assignments, traffic control, and various other related duties; and

Whereas, Ottis Franklin Jones was the first sheriff to recognize the need for and to hire a full-time Chaplain; and

Whereas, the North Carolina Sheriffs' Chaplains Association was formed in 1985; and

Whereas, Ottis Franklin Jones established a gymnasium inside the Law Enforcement Center that is accessible to the officers on a 24-hour-a-day, seven-day-a-week basis; and

Whereas, Ottis Franklin Jones was known throughout the State for his feelings on the constitutional authority of the "Office of Sheriff" and was outspoken on his position; and

Whereas, Ottis Franklin Jones felt that the "Sheriff" was the office through which the people exercise their right to decide who should be the chief law enforcement officer of their county and he tried very hard to uphold the confidence and responsibilities which the people of Cumberland County entrusted to him; and

Whereas, Ottis Franklin Jones was a member of the Lebanon Baptist Church; and

Whereas, Ottis Franklin Jones was devoted to his community and served as a member of many organizations, including the Lions Club, the Optimist Club, Fayetteville State University's Center for Continuing Education, the Executive Board of Directors of the Falcon Children's Home, the Advisory Council for Vocational Education for the Cumberland County School System, Mason with the Creasey Proctor Lodge, the Shriners, the Region M Criminal Justice Training Council, and the North Carolina Criminal Justice Education and Training Systems Council; and

Whereas, Ottis Franklin Jones died on November 30, 1987, and is survived by his wife, Ila; his son, Frankie and his daughter, Donna; and

Whereas, Ottis Franklin Jones will be remembered by all who knew him as a man devoted to his family, his profession, and his community;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to honor the life and memory of Ottis Franklin Jones and expresses the deep gratitude and appreciation of this State and its citizens, particularly those of Cumberland County for his life and service to law enforcement.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Ottis Franklin Jones.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of April, 1989.

S.J.R. 217 **RESOLUTION 19**

A JOINT RESOLUTION PROVIDING THAT THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF THE SENATE MAY, DURING THE 1989 REGULAR SESSION, PROVIDE FOR JOINT SESSIONS OF BOTH HOUSES TO ACT ON CONFIRMATION OF NOMINEES OR APPOINTMENTS.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. During the 1989 Regular Session of the General Assembly, whenever by operation of law the General Assembly must act on confirmation of nominees in joint session, or must make appointments in joint session, the Speaker of the House of

Representatives and the President Pro Tempore of the Senate may jointly set the dates and times of such session or sessions, but such session or sessions may only be held at dates and times when both houses are in session by orders of those houses. Such joint sessions shall be held in the Hall of the House of Representatives.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1989.

H.J.R. 194 **RESOLUTION 20**

A JOINT RESOLUTION HONORING THE MEMORY OF J. MARVIN JOHNSON, FORMER MEMBER OF THE NORTH CAROLINA GENERAL ASSEMBLY.

Whereas, J. Marvin Johnson was born in Benson, North Carolina on March 21, 1912, to the late James Mansey and Vara Lee Johnson; and

Whereas, J. Marvin Johnson was educated in the Johnston County public schools, at The University of North Carolina at Chapel Hill, where he received a B.S. degree in Commerce, and at the Raleigh Law School; and

Whereas, J. Marvin Johnson distinguished himself as a businessman, having owned and operated Smithfield Oil and Gin Company for 32 years and the Smithfield and Four Oaks Gin Company for 30 years and having served as president of JMJ Enterprises, a parent company of Merchant Discount Building Supplies; and

Whereas, J. Marvin Johnson served as deputy clerk of the Johnston Superior Court from 1936 until 1942, was elected auditor of Johnston County in 1942, 1946, and 1950, and was tax supervisor for the county for a number of years; and

Whereas, J. Marvin Johnson volunteered for the United States Navy in 1943, served on destroyer escorts from 1944 until 1946, and was discharged as Lieutenant Senior Grade USNR, Line Officer; and

Whereas, J. Marvin Johnson was an active participant in many veterans' organizations in Johnston County, including the Stevens-Barbour Post of the Veterans of Foreign Wars in Smithfield, which he organized and where he served as post commander, the Pou-Parrish Post of the American Legion, where he served as post commander, and the Johnston County War Veterans Association, where he also served as post commander; and

Whereas, J. Marvin Johnson took an early interest in politics, having served as president of the Young Democratic Club in Johnston

County for a number of years, as chairman of the Johnston County Democratic Executive Committee from 1962 until 1964, and as a member of the North Carolina Democratic Executive Committee from 1962 until 1968; and

Whereas, J. Marvin Johnson was elected to two two-year terms in the North Carolina General Assembly, where he served as a member of the Senate in 1968, representing the eighth senatorial district of Johnston, Nash, and Wilson Counties, and as a member of the House of Representatives in 1970, representing the 15th district of Johnston and Wilson Counties; and

Whereas, J. Marvin Johnson was a devoted and active member of his community as shown by his memberships in several civic and fraternal organizations, including the Kiwanis and Elks Clubs, the Loyal Order of Moose, which he helped organize and where he served as its first governor, and Delta Sigma Pi Fraternity; and

Whereas, J. Marvin Johnson was appointed to the board of trustees of the Johnston Memorial Hospital in 1966 and was chairman of that board for 12 years, and was former president of the Johnston County Chapter of the UNC Alumni; and

Whereas, J. Marvin Johnson was also a member of the North Carolina Oil Jobbers Association, the Carolina LPGAS Association, and the Carolina Ginners Association; and

Whereas, J. Marvin Johnson was a member of the First Presbyterian Church of Smithfield; and

Whereas, the General Assembly wishes to pay tribute to its former member for his dedication and leadership; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly of North Carolina wishes to honor the life and memory of J. Marvin Johnson and express its appreciation for his service to the citizens of Johnston County and to the State of North Carolina.

Sec. 2. The General Assembly of North Carolina wishes to express its sympathy to the family of J. Marvin Johnson, including his wife, Gertrude Brady Johnson; his two daughters, Betsy Dunnagan of Raleigh and Delane Armstrong of Ayden; and his son, James Marvin (Jimmy) Johnson, Jr., of Benson for the loss of their loved one.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of J. Marvin Johnson.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of May, 1989.

S.J.R. 1313 **RESOLUTION 21**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF HARGROVE (SKIPPER) BOWLES, JR.

Whereas, Hargrove (Skipper) Bowles, Jr., was born in Monroe, North Carolina, on November 16, 1919; and

Whereas, Hargrove (Skipper) Bowles, Jr., attended public schools and The University of North Carolina at Chapel Hill; and

Whereas, Hargrove (Skipper) Bowles, Jr., was an astute and accomplished businessman who always sought to integrate his interest and success in commerce with his social, civic and public interests. He was involved with such companies as Bowles, Hollowell, Conner and Company as Chairman of the Board, First Union Corporation as Vice Chairman of the Board of Directors and of the Executive Committee, Carlyle and Company Jewelers as Vice Chairman of the Board of Directors and of the Executive Committee, Rauch Industries, Inc., as Vice Chairman of the Board of Directors, and as a Director of Oakwood Homes Corporation; and

Whereas, Hargrove (Skipper) Bowles, Jr., believed politics was an honorable profession and was a good vehicle for positive action to help people. His desire to serve his fellow citizens caused him to spend four years as Chairman of the North Carolina Department of Conservation and Development, two years as a member of the North Carolina House of Representatives, and four years as a member of the North Carolina Senate. He was also the Democratic Party's nominee for Governor in 1972; and

Whereas, Hargrove (Skipper) Bowles, Jr., loved The University of North Carolina and served the University for many years as a member of the Board of Directors and then as President of The Educational Foundation and as a member of the University Board of Trustees and as its Chairman. He was also Chairman of the fund-raising committee to build the Student Activities Center. Perhaps his greatest service came as a result of his interest in the problem of alcoholism as evidenced by his work with the Center for Alcohol Studies at The University of North Carolina at Chapel Hill where he was the driving force in the public awareness of and commitment to the work of the Center; and

Whereas, Hargrove (Skipper) Bowles, Jr.'s, sphere of public service knew no geographical boundaries as evidenced by his being State Chairman of the North Carolina Heart Association, National Board Associate for the Boys' Club of America and also as Chairman of the North Carolina Partners of the Alliance (People to People

Program between North Carolina and Bolivia, South America, sponsored by the United States Department of State); and

Whereas, Hargrove (Skipper) Bowles, Jr., "never knew a stranger" because he genuinely cared for every person he met, especially the downtrodden and those out of luck, and he was always quietly helping folks with problems without their ever knowing from whence came the help; and

Whereas, Hargrove (Skipper) Bowles, Jr.'s, life might be described by some by his involvement in cultural, political, educational, or social activities, his love and devotion to his family were known by all: his wife, Deziree, his brothers, John Bowles, R. Kelly Bowles, and James Bowles, his children, Hargrove Bowles, III, Erskine B. Bowles, Mary Holland Bowles Blanton, and Martha Thomas Bowles, and grandchildren; and

Whereas, the General Assembly wishes to honor the memory of Hargrove (Skipper) Bowles, Jr., and to recognize his many years of service to his beloved State and his fellow citizens;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly of North Carolina recognizes the many accomplishments of Hargrove (Skipper) Bowles, Jr., and expresses the gratitude and appreciation of North Carolina and its citizens for his life and service towards the betterment of all.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Hargrove (Skipper) Bowles, Jr.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1989.

S.J.R. 311 **RESOLUTION 22**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DR. LEO WARREN JENKINS, FORMER CHANCELLOR OF EAST CAROLINA UNIVERSITY.

Whereas, Leo Warren Jenkins was born on May 28, 1913, in Succasunna, New Jersey and was raised in Elizabeth, New Jersey; and

Whereas, Leo Warren Jenkins received a B.S. degree in Education from Rutgers University, a masters degree from Columbia University, and a doctorate degree from New York University; and

Whereas, Leo Warren Jenkins served his country in the United States Marine Corps during World War II and for his heroism was awarded the Bronze Star and two Presidential Unit Citations; and

Whereas, Leo Warren Jenkins began a career in education by teaching in the public schools of New Jersey and at Montclair Teachers College, and as Assistant to the Commissioner for Higher Education of the New Jersey State Department of Education; and

Whereas, Leo Warren Jenkins came to North Carolina in 1947, where he became Dean of East Carolina Teachers College and maintained that position until 1960; and

Whereas, Leo Warren Jenkins was President of East Carolina College from 1960 until 1967, President of East Carolina University from 1967 until 1972, and Chancellor of East Carolina University from 1972 until his retirement in 1978 because of mandatory retirement at age 65; and

Whereas, Leo Warren Jenkins worked tirelessly in transforming East Carolina Teachers College into East Carolina University, as shown by his role in establishing several professional schools, gaining a medical school, attaining University status and becoming part of the University of North Carolina system; and

Whereas, during Leo Warren Jenkins' 31 years at ECU, the growth of the University can be shown by the increase in its student enrollment and faculty, by the increase in the number of its academic programs and by the establishment of the Regional Development Institute; and

Whereas, while Leo Warren Jenkins can best be remembered for his accomplishments at ECU, he can also be remembered for the pride he instilled in the people of Eastern North Carolina and can best be summed up by Jim Shumaker, former Durham Morning Herald managing editor and UNC Journalism Instructor who said, "He is one of the greatest things that ever happened to Eastern North Carolina. He gave Eastern North Carolina a whole new attitude about themselves and their region. He must have spoken to every civic club east of Raleigh at least twice, telling these people how great they were and how great their region was. What he did was as much a lifting of their spirit as of their economy."; and

Whereas, after Leo Warren Jenkins' retirement, he was appointed by former Governor James B. Hunt, Jr., as a special assistant for Economic Development from 1978 until 1984; and

Whereas, Leo Warren Jenkins was committed to several organizations and served in many capacities, including Chairman of the Board of Directors of the Wachovia Bank and Trust in Greenville, Chairman of the North Carolina Council of State Universities, Member of the Legislative Study Commission on Student Financial

Aid, Member of the National Commission on Higher Education Accrediting; Director of the Triangle Chapter of the National Football Hall of Fame, Member of the Board of the North Carolina Symphony Society, Member of the Council on Postsecondary Education, and Delegate to the White House Conference on Education; and

Whereas, Leo Warren Jenkins was honored as Citizen of the Year and awarded the Golden Deeds Award by the Greenville Chamber of Commerce, and received the North Carolina Public Service Award in 1977; and

Whereas, Leo Warren Jenkins received two honorary degrees, Doctor of Humanities from ECU and Doctor of Human Letters from Campbell University; and

Whereas, Leo Warren Jenkins died on January 14, 1989; and

Whereas, Leo Warren Jenkins leaves to mourn, his wife, Nancy Murray Jenkins; his children, Dr. James J. Jenkins of St. Louis, Missouri; Jack W. Jenkins of Morehead City, North Carolina; Jeffrey D. Jenkins of Washington, North Carolina; Patricia Hogan, of Greenville, North Carolina; Dr. Sallie Person of Werzburg, West Germany; and Suzanne Lodge of Buffalo, New York; his eleven grandchildren and a host of other family and friends;

Whereas, it is only fitting for the General Assembly to honor Leo Warren Jenkins;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly of North Carolina wishes to honor the life and memory of Leo Warren Jenkins for his contributions to East Carolina University and in the field of education, for the pride he instilled in the citizens of Eastern North Carolina and for his distinguished leadership.

Sec. 2. The General Assembly of North Carolina wishes to express its sympathy to the family of Leo Warren Jenkins for his loss.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Leo Warren Jenkins.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1989.

S.J.R. 475 **RESOLUTION 23**

A JOINT RESOLUTION DEDICATING PROPERTIES AS PART OF THE STATE NATURE AND HISTORIC PRESERVE.

Whereas, Article XIV, Section 5 of the North Carolina Constitution authorizes the dedication of State and local government properties as part of the State Nature and Historic Preserve, upon acceptance by resolution adopted by a vote of three-fifths of the members of each house of the General Assembly and removal of properties from that Preserve by law adopted by three-fifths of the members of each house of the General Assembly; and

Whereas, the General Assembly enacted the State Nature and Historic Preserve Dedication Act, Chapter 443, 1973 Session Laws, to prescribe the conditions and procedures under which properties may be specifically dedicated for the purposes enumerated by Article XIV, Section 5 of the North Carolina Constitution; and

Whereas, in accordance with G.S. 143-260.8 the Council of State has petitioned the General Assembly to adopt a resolution pursuant to Article XIV, Section 5 of the Constitution accepting properties added to the N.C. State Park System since the last dedication of lands on March 6, 1979, and designated in said petition for inclusion in the State Nature and Historic Preserve; and

Whereas, such petition also recommends that one parcel at Jockey's Ridge State Park and one parcel at Morrow Mountain State Park be removed from the State Nature and Historic Preserve;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly dedicates all lands and waters hereinafter described as components of the State Nature and Historic Preserve:

(1) All lands and waters within the boundaries of the following units of the State Parks System as of April 4, 1989: Baldhead Island State Natural Area, Bay Tree Lake State Park, Boones Cave State Park, Bushy Lake State Natural Area, Carolina Beach State Park, Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Dismal Swamp State Natural Area, Duke Power State Park, Eno River State Park, Fort Fisher State Recreation Area, Fort Macon State Park, Goose Creek State Park, Hammocks Beach State Park, Hanging Rock State Park, Hemlock Bluffs State Natural Area, Jones Lake State Park, Lake James State Park, Lake Waccamaw State Park, Medoc Mountain State Park, Merchant's Millpond State Park, Mitchells Millpond State Natural Area north of S.R. 2224, Mount Jefferson State Park, Mount Mitchell State Park, Pilot Mountain State Park, Raven Rock State Park, Singletary Lake State Park, South

Mountains State Park, Theodore Roosevelt State Natural Area, and Weymouth Woods-Sandhills Nature Preserve.

(2) All lands and waters within the boundaries of William B. Umstead State Park as of April 4, 1989, with the exception of Tract Number 65, containing 22.93140 acres as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977, and as removed from the State Nature and Historic Preserve by Chapter 450, Section 1 of the 1985 Session Laws. The State of North Carolina may only exchange this land for other land for the expansion of William B. Umstead State Park or sell and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

(3) All lands within the boundaries of Jockey's Ridge State Park as of April 4, 1989, with the exception of the following tract: That certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, more particularly described as follows: BEGINNING at a point which is located north 39° 07' 08" 67.86 feet from an iron pipe having a NC coordinate value of X-2996057.363 and Y-823796.892, running from said beginning point south 39° 07' 08" 15 feet to an iron pipe; thence north 49° 10' 51" east 47.98 feet to an iron pipe in the edge of the right-of-way of the U.S. 158 Bypass; thence southeasterly along the aforementioned right-of-way 15 feet to a point; thence south 49° 10' 51" west 47.98 feet to the point of beginning and containing 719.7 square feet more or less, and as drawn out by the Design and Development Section of the Division of Parks and Recreation on a map dated November 8, 1988.

(4) All lands within the boundaries of Morrow Mountain State Park as of April 4, 1989, with the exception of the following tract: That certain tract or parcel of land at Morrow Mountain State Park in Stanly County, North Albemarle Township, containing 0.303 acres, more or less, as surveyed and platted by Thomas W. Harris R.L.S., on a map dated August 27, 1988, reference to which is hereby made for a more complete description.

(5) All lands within the boundaries of Pettigrew State Park as of April 4, 1989, with the exception of the following tract: The portion of that certain tract or parcel of land at Pettigrew State Park in Washington County, Scuppernong Township, described in Deed Book 257, page 479, lying

south of S.R. 1183 or the extension thereof along its present right-of-way.

(6) All land within the boundaries of Crowder's Mountain State Park as of April 4, 1989, with the exception of the following tract: The portion of that certain tract or parcel of land at Crowder's Mountain State Park in Gaston County, Crowder's Mountain Township, described in Deed Book 1939, page 800, and containing 757.28 square feet and as shown in a survey by Tanner and McConnaughey, P.A. dated 7/22/88.

(7) All lands owned in fee simple by the State at the New River Scenic River as of April 4, 1989, with the exception of the following tract: That certain tract or parcel of land at the New River Scenic River in Alleghany County, Piney Creek Township, described in Deed Book 112, page 610, containing 16.54 acres, and consisting of lots #12 through #19 on the survey by Dudley and Zeh, R.L.S. dated 9/21/79.

(8) All lands and waters within the boundaries of Stone Mountain State Park as of April 4, 1989, with the exception of the following tract: The portion of that certain tract or parcel of land at Stone Mountain State Park in Wilkes County, Traphill Township, described as parcel 33-02 in Deed Book 633-193, and more particularly described as all of the land in this parcel lying to the west of the eastern edge of the Air Bellows Gap Road as shown on the National Park Service Land Status Map 33 dated 3/24/81, containing approximately 72 acres.

(9) All lands and waters located within the boundaries of the following State Historic Sites as of March 6, 1979: Alamance Battleground Historic Site, Historic Bath Historic Site, Bentonville Battleground Historic Site, Brunswick Town Historic Site, Governor Richard Caswell Memorial/C.S.S. Neuse Historic Site, Duke Homestead Historic Site, House in the Horseshoe Historic Site, James Iredell House Historic Site, President James K. Polk Memorial Historic Site, Stagville Preservation Center Historic Site, State Capitol Historic Site, Town Creek Indian Mound Historic Site, Tryon Palace Historic Site, Governor Zebulon B. Vance Birthplace Historic Site, and Thomas Wolfe Memorial Historic Site.

Sec. 2. In accordance with G.S. 143-260.8(e), the Secretary of State is directed to forward a certified copy of this resolution to the

Register of Deeds of the counties wherein the above dedicated properties are located.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1989.

S.J.R. 267 **RESOLUTION 24**

A JOINT RESOLUTION ADOPTING THE COMPREHENSIVE LONG-RANGE PLAN FOR ADULTS WITH SEVERE AND PERSISTENT MENTAL ILLNESS AS POLICY GUIDANCE FOR THE DEVELOPMENT OF SERVICES.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly adopts the comprehensive Long-Range Plan for Adults with Severe and Persistent Mental Illness as presented in the January, 1989, report of the Mental Health Study Commission to the General Assembly. Such adoption by the General Assembly is solely for the purpose of providing policy guidance for the development of services.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1989.

H.J.R. 2025 **RESOLUTION 25**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ALBERT COATES.

Whereas, Albert Coates was born on August 25, 1896, in Johnston County, was one of nine children born to Daniel Miller and Nancy Lassiter Coates, graduated from the University of North Carolina in 1918, served briefly as a second lieutenant in the United States Army, and graduated from Harvard University with a law degree in 1923; and

Whereas, Albert Coates returned to Chapel Hill to teach law at the University of North Carolina and, while teaching criminal law, noticed that his casebook consisted primarily of Supreme Court decisions and that these cases constituted less than four-tenths of one per cent of all the criminal cases tried in the State's Courts; and

Whereas, Albert Coates started visiting sheriff's and police departments to find out what was taking place in the real world and found that these law enforcement agencies were also desirous of

training, thus the idea for creating an Institute of Government was conceived; and

Whereas, Albert Coates thought that the Institute of Government should offer training programs for law enforcement officers and a broader program of research training, and consultation for all types of State and local officials; and after a long struggle the Institute of Government became a part of the University of North Carolina in January of 1942; and Albert Coates remained its director until 1962, when he returned to teach law at the University of North Carolina; and

Whereas, after his retirement from the University of North Carolina in 1969, Albert Coates was able to devote his time to an earlier idea to provide public school teachers of civics and government with information concerning practical government as opposed to what was being taught in books and with the support of State funds, and so created an Institute of Civic Education in the University's Extension Division which expanded greatly; and by 1980 the State Board of Education responded to these efforts by formally approving The Albert Coates Citizenship Education Program as part of the basic skills instructional program of public schools, to be included in the social studies curriculum; and

Whereas, Albert Coates also wrote and published tributes to his colleges, his family, the State Highway Patrol, law enforcement officers, and others; and

Whereas, his books include What the University of North Carolina Meant to Me, The University of North Carolina at Chapel Hill: A Magic Gulf Stream in the Life of North Carolina, and Edward Kidder Graham, Harry Woodburn Chase, Frank Porter Graham: Three Men in the Transition of The University of North Carolina at Chapel Hill from a Small College to a Great University; and

Whereas, Albert Coates died on January 28, 1989, in his ninety-third year, after an extraordinarily constructive life of public service and will be long remembered as one of North Carolina's most outstanding citizens;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly wishes to honor the life and memory of Albert Coates and expresses its sympathy to his widow, Gladys Coates, his family, and his friends.

Sec. 2. The General Assembly wishes to recognize Albert Coates for his many accomplishments including founding the Institute of Government, inspiring the lives of his law students, and improving

the teaching of civics and government in the State's public high schools.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Albert Coates and to the University of North Carolina at Chapel Hill.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1989.

S.J.R. 1304 **RESOLUTION 26**

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE TOWN OF PRINCEVILLE AND ACKNOWLEDGING PRINCEVILLE AS THE OLDEST INCORPORATED BLACK MUNICIPALITY ON THE NORTH AMERICAN CONTINENT.

Whereas, at the end of the Civil War when many blacks migrated to the midwest for better opportunities, several freedmen decided to remain in Edgecombe County to settle an area they called Freedom Hill; and

Whereas, Freedom Hill was sometimes called Liberty Hill and was named for the hill from which Federal soldiers informed the freedmen of their emancipation; and

Whereas, in the middle of an agricultural area, many of Freedom Hill's citizens were artisans and skilled workers who held such occupations as brick masons, carpenters, laundresses, and day laborers; and

Whereas, some of Freedom Hill's most influential citizens included Robert Taylor, a school teacher who served as county justice of peace, a two-term State Senator, and editor of the Edgecombe Watchman and William Mason, a teacher and minister who was elected to the State House of Representatives and the Senate and was a member to the Constitutional Convention of 1875; and

Whereas, the citizens of Freedom Hill recognized the advantages of incorporating their town and with the help of other citizens in Edgecombe County, petitioned the legislature in 1885; and

Whereas, Freedom Hill was incorporated as Princeville on February 20, 1885; and

Whereas, Princeville was named for Turner Prince, who had been born a slave in North Carolina in 1843 and was one of Freedom Hill's earliest residents; and

Whereas, Princeville's first officers included Milton Pittman, the first mayor, Turner Prince, a commissioner, and Orren James, a commissioner and grocer; and

Whereas, Princeville holds the distinction of being the oldest incorporated black municipality on the North American continent; and

Whereas, despite economic, political, and other hardships, the citizens of Princeville remained loyal to their town and this loyalty enabled the citizens to be proud of the town's heritage which has allowed it to grow and prosper;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to honor the lives and memory of the founders and early residents of Princeville for their contributions to North Carolina and wishes to acknowledge Princeville as the oldest incorporated black municipality on the North American continent.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the Town Clerk of the Town of Princeville.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of June, 1989.

H.J.R. 2034 **RESOLUTION 27**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CLAUDE E. POPE.

Whereas, Claude E. Pope was born in Harnett County, North Carolina, on November 19, 1934, attended school in Harnett County, worked as a young man in Eastern North Carolina, attended the University of North Carolina at Chapel Hill, and graduated from that institution in 1956; and

Whereas, Claude E. Pope was an astute and honorable businessman, whose dedicated service enriched not only those companies he served, but the people with whom he worked and transacted business; and

Whereas, Claude E. Pope established notable careers with such important North Carolina companies as Cameron-Brown Company and AMIC Corporation and served on the boards of directors of such nationally recognized corporations as First Union Corporation and Sunstates, Inc.; and

Whereas, Claude E. Pope always upheld the highest traditions of community service in his business career, serving in leadership capacities with such organizations as The Boy Scouts of America, the North Carolina Council for Economic Education, Peace College, and the Raleigh Chamber of Commerce; and

Whereas, Claude E. Pope was recognized by business leaders throughout the nation for his vision and forward-thinking and served with distinction as president of the Mortgage Bankers Association of America and as a member of the executive committee of the Mortgage Insurance Companies of America, bringing honor to the State of North Carolina; and

Whereas, Claude E. Pope worked tirelessly to assure all North Carolinians access to adequate housing, as evidenced by his membership in the Housing Roundtable, the Advisory Board of the Joint Center for Urban Studies of Massachusetts Institute of Technology and Harvard University, the Urban Land Institute, the Mortgage Roundtable of the National Association of Homebuilders, the Advisory Board of the Federal Home Loan Mortgage Corporation, and other similar organizations; and

Whereas, Claude E. Pope understood the importance of honorable political service, working with diligence and foresight to bring positive action for the benefit of North Carolina's people; and

Whereas, the desire to help his fellow citizens brought Claude E. Pope recognition for his wise counsel and energetic service to such organizations as the North Carolina Board of Economic Development, the North Carolina Housing Corporation, the North Carolina Board of Science and Technology, the Governor's Coastal Initiative Commission, the Governor's Aquaculture Commission, and other agencies; and

Whereas, Claude E. Pope served with distinction as North Carolina's Secretary of Commerce from January 8, 1987, to January 24, 1989; and

Whereas, during Claude E. Pope's tenure as Secretary, North Carolina led the nation in the recruitment of new manufacturing firms, experienced strong job growth, low unemployment and overall economic good health; and

Whereas, as Secretary of Commerce, Claude E. Pope worked hard to identify and tap new areas of economic opportunity for North Carolina; and

Whereas, Claude E. Pope showed tremendous courage in continuing to serve the people of North Carolina even while silently battling the illness which eventually took his life; and

Whereas, Claude E. Pope genuinely cared for every person he met, enriching the lives of all those he knew and who knew him; and

Whereas, his love and devotion to his family were known by all: his wife, Elizabeth (Libby) Raynor Pope; his brothers, Pat and William Pope; his sister, Rebekah Pope Kase; his children, Sara Pope Titchener, Claude Jr., and William; his parents, Claude Efton and Rochelle Jackson Pope; and his six grandchildren; and

Whereas, the General Assembly wishes to honor the memory of Claude E. Pope and to recognize his many years of service to his beloved State and his fellow citizens;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly of North Carolina recognizes the many accomplishments of Claude E. Pope, and expresses the gratitude and appreciation of North Carolina and its citizens for his life and service towards the betterment of all.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Claude E. Pope.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1989.

S.J.R. 1321 **RESOLUTION 28**

A JOINT RESOLUTION HONORING THE LIVES AND MEMORY OF JOHN WATSON, MICHAEL HIGGINS, JAMES WIMBLE, AND JOSHUA GRAINGER, THE FOUNDERS OF THE CITY OF WILMINGTON, ON THE CITY'S TWO HUNDRED FIFTIETH ANNIVERSARY.

Whereas, the City of Wilmington was founded in 1739, upon the brow of the hill above the mighty Cape Fear River; and

Whereas, the founding fathers, John Watson, Michael Higgins, James Wimble, and Joshua Grainger, are worthy of honoring and remembering on the two hundred fiftieth anniversary of the City of Wilmington; and

Whereas, the City of Wilmington possesses a rich, fascinating history and is replete with a unique culture which natives treasure and visitors find alluring; and

Whereas, the citizens of the City of Wilmington acknowledge those individuals of the past and present who have had the inspiration to dream, the ability to achieve, and the willingness to serve; and

Whereas, the citizens of the City of Wilmington proudly claim their heritage as part of a vital whole which has existed, prevailed, and flourished for two and a half centuries; and

Whereas, the residents of the City of Wilmington live in a place worthy of celebration; a city filled with architectural wonder, floral delight, and surrounded by wet sun-sparkled beauty;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The House of Representatives wishes to honor the lives and memory of John Watson, Michael Higgins, James Wimble, and Joshua Grainger, the founding fathers of the City of Wilmington, and joins in the celebration of the City's two hundred fiftieth anniversary, which will officially begin on July 1, 1989.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the City of Wilmington.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1989.

H.J.R. 2032 **RESOLUTION 29**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF PORTER CLAUDE (P.C.) COLLINS, JR., A FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Porter Claude (P.C.) Collins, Jr., was born in Alleghany County on July 1, 1928, to Porter Claude and Nannie Billings Collins; and

Whereas, Porter Claude (P.C.) Collins, Jr., attended Glade Valley High School and the University of North Carolina at Chapel Hill, where he took two insurance courses; and

Whereas, Porter Claude (P.C.) Collins, Jr., was a livestock farmer and the owner of an insurance agency; and

Whereas, Porter Claude (P.C) Collins, Jr., served as director of the Blue Ridge Electric Membership Corporation; as a member of the Independent Insurance Agents of North Carolina; and as a member of the New River Development Corporation; and

Whereas, as a community leader, Porter Claude (P.C.) Collins, Jr., served as chairman of the Alleghany County Democratic Executive Committee; as chairman of the Laurel Springs Community Club from 1956 to 1962; as trustee of the Northwestern Regional Library; as a member of the Executive Committee of the New River Mental Health Association for Alleghany, Ashe, and Watauga Counties; as a commissioner for the Alleghany County Board of County Commissioners; and as the Alleghany County Tax Supervisor; and

Whereas, Porter Claude (P.C.) Collins, Jr.'s civic activities included memberships in the Sparta Masonic Lodge 423, where he served as Past Master; the York Rite Masons; the New River Shrine Club; the Oasis Shrine Temple; the Laurel Springs Grange; the Alleghany Pomona Grange, where he served as Master from 1957 to

1963; and the North Carolina State Grange, where he served as Deputy from 1956 to 1965 and was chosen "Grange Deputy of the Year" for 1962; and

Whereas, Porter Claude (P.C.) Collins, Jr., was active in Sparta Methodist Church, where he served as Steward, treasurer of the building fund and as a member of the Official Board; and

Whereas, Porter Claude (P.C.) Collins, Jr., served the people of his district and the State with distinction by serving in the House of Representatives for six terms; and

Whereas, while as a member of the House of Representatives, Porter Claude (P.C.) Collins, Jr., served on numerous legislative committees, including Banks, Insurance, Local Government, and Public Utilities; and

Whereas, Porter Claude (P.C.) Collins, Jr., was appointed a member of former Governor Robert Scott's Advisory Committee studying the feasibility of establishing a Veterinary School of Medicine and served on the North Carolina State Parks and Forests Study Commission; and

Whereas, the State of North Carolina suffered a great loss on February 14, 1988, with the death of Porter Claude (P.C.) Collins, Jr., one of its most distinguished citizens; and

Whereas, Porter Claude (P.C) Collins, Jr., is survived by his widow, Mrs. Annie Pugh Collins and their two daughters, Susan and Linda;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly wishes to honor the life and memory of Porter Claude Collins, Jr., for his leadership and service to his district and the State of North Carolina.

Sec. 2. The General Assembly wishes to extend its sympathy to Mrs. Annie Collins, Susan, and Linda in the loss of their husband and father.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Porter Claude (P.C.) Collins, Jr.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1989.

H.J.R. 1401 **RESOLUTION 30**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DR. ELIZABETH DUNCAN KOONTZ.

Whereas, Dr. Elizabeth Duncan Koontz honored the State of North Carolina and all its citizens by a life of outstanding service to its people and these United States; and

Whereas, Dr. Elizabeth Duncan Koontz served as the first black President of the National Education Association, as the first black Director of the U.S. Department of Labor, Women's Bureau, and as Assistant Superintendent of the North Carolina Department of Instruction; and

Whereas, Dr. Elizabeth Duncan Koontz was appointed by Presidents Johnson, Nixon, Ford, and Carter to serve on many important commissions where she represented the United States; and

Whereas, Dr. Elizabeth Duncan Koontz was appointed by Governors Scott, Holshouser, and Hunt to serve in many capacities on behalf of the State of North Carolina; and

Whereas, Dr. Elizabeth Duncan Koontz was held in the highest esteem by members of her chosen profession, teaching, so that they elected her to represent them throughout her more than 30 years of practice in the education communities of this State and Nation; and

Whereas, Dr. Elizabeth Duncan Koontz continued throughout her life to work to assist working women in their quest to achieve equal pay and employment policies that would affect positively the life of women and their families; and

Whereas, no job was too small for Dr. Elizabeth Duncan Koontz in support of the citizens of Salisbury and in particular her church and Livingstone College; and

Whereas, Dr. Elizabeth Duncan Koontz strived continually to work with young persons and women to encourage them to develop themselves to their fullest potential;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly wishes to honor the life and memory of Dr. Elizabeth Duncan Koontz and recognizes the importance of the contributions she made during her lifetime.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the family of Dr. Elizabeth Duncan Koontz and to the President of Livingstone College.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1989.

S.J.R. 1322 **RESOLUTION 31**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN RAYMOND SHUTE, JR., FORMER MEMBER OF THE NORTH CAROLINA GENERAL ASSEMBLY.

Whereas, John Raymond Shute, Jr., was born January 14, 1904, in Monroe, the only son of John Raymond Shute, Sr., and Kittie Summerset; and

Whereas, John Raymond Shute, Jr., was affectionately known as "J. Ray" all his life; and

Whereas, J. Ray Shute was educated in the Monroe public schools, graduated from the Georgia Military Academy in 1921, where he was 1st Lieutenant in the R.O.T.C. from 1920 until 1921, attended Trinity College in Durham from 1921 to 1924, and received a master's degree from Atlantic University; and

Whereas, J. Ray Shute married Sarah Mason of Durham in 1924 and from that union three children were born: John Raymond Shute III, Sarah Mason Shute Sommers and Joseph Kirkland Shute; and

Whereas, J. Ray Shute was a businessman and served in the capacities of president, chairman of the board, member of the board of directors, partner, and business manager of many businesses including the J.R. Shute Company, Shute Motors, Inc., United Airways of North Carolina, Monroe Investment, Inc., Union Aircraft Corp., Union Broadcasting Station, Union Laundry Service, Shute-Wilson Gin Company, Ellen Fitzgerald Hospital, Finance Corporation of America, Background Sound Systems, Inc., the Southern Regional Council, and the Monroe Full Fashion Hosiery Mill; and

Whereas, as a community leader, J. Ray Shute served Monroe as president of the Monroe Chamber of Commerce, the Monroe Board of Trade, the Monroe Board of Realtors, the Monroe Lion's Club, the Monroe Executive Club, the Duke Alumni Association, and the Council on Human Relations; and

Whereas, J. Ray Shute served as mayor of Monroe for two terms, as president of the North Carolina League of Municipalities, and as State Director of the Federal Office of Price Stabilization; and

Whereas, J. Ray Shute worked to secure new industries for Union County and served as the first chairman of the Union County Industrial Development Commission; and

Whereas, J. Ray Shute worked towards the betterment of Union County and served the county in many capacities, including the first chairman of the Union County Library Board, chairman of the Union County Board of Education, and chairman of the Board of County Commissioners; and

Whereas, J. Ray Shute was also active as chairman of the Union County Chapter of the American Red Cross, as a member of the Parks and Recreation Commission, as a Star and Life Scout, as District Scout Commissioner, as a member of the Kiwanis Club, as a member of the Rotary Club, as chairman of the Board of Trustees of Union Memorial Hospital, and as a member of the Union County Board of Health; and

Whereas, J. Ray Shute served with distinction in the State Senate in 1935, where he was chairman of the State Library Committee that created the statewide library system; and

Whereas, J. Ray Shute was an editor, lecturer, and author of twenty published books; and

Whereas, J. Ray Shute was a member of the Board of Stewards of the Central Methodist Church, taught bible classes, sang in the choir, and served as District Lay Leader; and

Whereas, J. Ray Shute founded the Charlotte Unitarian Church and was Dean of All Souls Chapel in Monroe; and

Whereas, J. Ray Shute served as president of the Unitarian Layman League, as president of the Unitarian Fellowship for Social Justice, as president of the Colloquium on the Nature of Man, as a delegate to the International Humanist Association in Amsterdam in 1952, as a delegate to the International Association for Religious Freedom at Oxford University in England; and

Whereas, J. Ray Shute established Unitarian Fellowships throughout the United States, Canada, and Mexico; and

Whereas, J. Ray Shute was a Mason, who served as head of all local Masonic organizations, and was a mason in several states and national and international organizations, and was honored by many; and

Whereas, as an amateur anthropologist, J. Ray Shute, along with his wife, visited 125 countries and islands, living with primitive tribes in such places as the Gobi Desert, Outer Mongolia, the Amazon Jungle, and Timbuktu; and

Whereas, J. Ray Shute worked to enhance the lives of those in his community, county, and State by securing industries, better education, hospitals, and other needed services; and

Whereas, the memory of J. Ray Shute will always be remembered by his loved ones and friends;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to honor the life and memory of John Raymond "J. Ray" Shute, Jr., for his outstanding

service to his community, Union County, the State of North Carolina, and his fellow citizens.

Sec. 2. The General Assembly wishes to express its sympathy to the family and friends of John Raymond "J. Ray" Shute, Jr.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of John Raymond "J. Ray" Shute, Jr.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1989.

S.J.R. 1024 **RESOLUTION 32**

A JOINT RESOLUTION HONORING THE FOUNDERS AND EARLY SETTLERS OF THE TOWN OF WAXHAW ON ITS CENTENNIAL OBSERVANCE.

Whereas, the Town of Waxhaw in Union County is celebrating its centennial in 1989; and

Whereas, Union County was formed from parts of Anson and Mecklenburg Counties in 1842 and was formerly a part of New Hanover and Bladen Counties; and

Whereas, Union County got its name as a result of a dispute between the Whigs and Democrats as to whether it should be named Clay or Jackson, but "Union" was suggested and adopted as a compromise because the new county was a union of parts from the other counties; and

Whereas, during this time no regular townships existed and the affairs of the county were managed by militia districts, which came to be known as "Captain's Beats" and usually assumed the name of the commanding officer of that particular locality; and

Whereas, the town developed about midway between the center of the Old Waxhaws Settlement and its northeastern fringe where Andrew Jackson, Sr., father of President Andrew Jackson, settled his family; and

Whereas, the Town of Waxhaw was developed on a rock ridge, on the western edge of Union County in the southernmost tip of North Carolina's Piedmont plateau; and

Whereas, during the 1880s many families lived along the roads and the trading route near the site where the Town of Waxhaw now stands; and

Whereas, in the 1880s cotton was grown commercially in the Town of Waxhaw because the soil was unusually suitable for its growth and the pace of development accelerated with the coming of the Georgia, Carolina, and Northern Railway in the Spring of 1888; and

Whereas, Duncan C. McDonald was the first man to establish residence and business within the town limits of Waxhaw and also the first Postmaster of the Town of Waxhaw; and

Whereas, in 1888, Colonel James C. Davis and his family moved to the Town of Waxhaw from Scotland County and he became the first Mayor of the Town of Waxhaw;

therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to honor the memory of the founders and early settlers of the Town of Waxhaw on its centennial observance.

Sec. 2. The Secretary of State shall transmit a certified copy of this resolution to the Town of Waxhaw and to the Centennial Committee.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1989.

S.J.R. 1332 **RESOLUTION 33**

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF BASIL LEE WHITENER, FORMER NORTH CAROLINA CONGRESSMAN.

Whereas, Basil Lee Whitener was born in York County, South Carolina, in 1915, to the late Levi and Laura Barrett Whitener; and

Whereas, Basil Lee Whitener attended Gaston County public schools, graduated from Lowell High School in 1931, and Rutherford College in 1933, attended the University of South Carolina from 1933 until 1935, and graduated from Duke Law School in 1937; and

Whereas, Basil Lee Whitener married Harriet Priscilla Morgan of Union, South Carolina, and of that marriage four children were born: John Morgan Whitener, Laura Lee Whitener Cloninger, Basil Lee Whitener, Jr., and Barrett Simpson Whitener; and

Whereas, Basil Lee Whitener joined the United States Navy in 1942, served in World War II as a Naval gunnery officer in the Mediterranean and the Atlantic, which earned him a personal commendation from the Secretary of the Navy for distinguished service, and separated from the military in 1945 with the rank of lieutenant; and

Whereas, Basil Lee Whitener served the Democratic party as president of the North Carolina Young Democrats from 1946 until 1947, as a delegate to the Democratic National Conventions of 1948

and 1960, and as chairman of the Young Democratic National Convention in November of 1949; and

Whereas, Basil Lee Whitener served in the North Carolina House of Representatives in 1941; and

Whereas, Basil Lee Whitener was elected to the 85th Congress in November 1956, and was reelected to the 86th, 87th, 88th, 89th, and 90th Congresses, where he served on the Judiciary and District of Columbia Committees; and

Whereas, while as a member of Congress, Basil Lee Whitener sponsored or co-sponsored 119 measures, of which 23 were enacted as sponsored, nine were enacted into law in other bills, and 15 others passed the House but were not acted upon in the Senate; and

Whereas, Basil Lee Whitener's legislation included: the Omnibus Crime Law of 1967; the Wage Earner's Act of 1958; the Gifts to Minors Act; the Uniform Partnership Act; an Act to Prohibit Flag Desecration; a States Rights Bill; an Act to Allow Compensation for Counsel for Indigents in Federal Courts; legislation to make it a federal crime for a parent of a minor child to flee from the state with the intent to evade supporting his child or children; and

Whereas, Basil Lee Whitener's Rapid Transit and Subway Act created the modern subway and bus transportation system in the District of Columbia, which earned him the title, "Father of the D.C. Subway System"; and

Whereas, Basil Lee Whitener was recognized by his peers in the House of Representatives as a fine constitutional scholar who fought to protect the domestic textile industry from the floods of foreign imports, who fought to protect and broaden federal benefits for social security and veterans pension recipients, who supported all appropriations for national defense, who personally handled hardship cases involving members of the Armed Services, and who at the personal request of President Johnson made an inspection tour of military operations in Vietnam and reported back to the President; and

Whereas, Basil Lee Whitener served his community as the organizer and first president of the Gastonia Junior Chamber of Commerce in 1938, as vice president of the North Carolina Junior Chamber of Commerce from 1940 to 1941 and president of that organization from 1941 to 1942, as a member of the Kiwanis, Elks, American Legion 40 and 8, and Veterans of Foreign Wars, as a Mason, as a member of the York and Scottish Rite bodies, as a Shriner, and as chairman of Board of Advisors and Board of Trustees of Belmont Abbey College; and

Whereas, Basil Lee Whitener was president of the Gaston County Bar Association in 1950, a member of the North Carolina General Statutes Commission in 1946, appointed to the North Carolina

Commission to Study Improvement of Justice from 1947 to 1949 by the governor, a member of the Judicial Conference of the Fourth Federal Judicial Circuit, and the North Carolina Tercentenary Commission; and

Whereas, Basil Lee Whitener received Honorary Doctor of Laws Degrees from Belmont Abbey College in 1960 and from Pfeiffer College in 1965, the "Watchdog of the Treasury" award from the National Association of Businessmen, Inc., and the Merit Medallion presented by the Patriotic Order of Sons of America in 1966; and

Whereas, Basil Lee Whitener was a member of the First United Methodist Church of Gastonia and served on its official board; and

Whereas, Basil Lee Whitener died on March 20, 1989, leaving family and friends to mourn his loss;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly wishes to honor the life and memory of Basil Lee Whitener and expresses the gratitude and appreciation of this State and its citizens for his life and service to his community and to North Carolina.

Sec. 2. The General Assembly extends its sympathy to the family and friends of Basil Lee Whitener for the loss they have suffered.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Basil Lee Whitener.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

H.J.R. 2038 **RESOLUTION 34**

A JOINT RESOLUTION SETTING THE TIME FOR ADJOURNMENT OF THE 1989 GENERAL ASSEMBLY TO MEET IN 1990, AND LIMITING THE SUBJECTS THAT MAY BE CONSIDERED IN THAT SESSION.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. At 4:00 P.M. on Saturday, August 12, 1989, the Senate and the House of Representatives shall adjourn to reconvene at 8:00 p.m. on Monday, May 21, 1990. During that session only the following matters may be considered:

(1) Bills directly affecting the State budget for fiscal year 1990-91, provided that no appropriations or finance bill may be filed for introduction in the Senate or introduced in

the House of Representatives after Tuesday, May 29, 1990, provided that any such measure submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. on that date and filed for introduction in the Senate or introduced in the House of Representatives by 5:00 p.m. on Thursday, May 31, 1990, shall be treated as if it had met the deadlines established by this subdivision.

(2) Bills introduced in 1989 and having passed third reading in 1989 in the house in which introduced, received in the other house, and not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading, and does not violate the rules of either body. Notwithstanding any other rule, the following bills are eligible for consideration: House Bills 407, 545, 689, 964, 1028, 1135, 1148, 1152, 1161, 1205, 1206 and 1297.

(3) Bills implementing the recommendations of study commissions authorized or directed to report to the 1990 Session. Any bills authorized by this subdivision must be filed for introduction in the Senate or introduced in the House of Representatives no later than 5:00 p.m. on Wednesday, May 30, 1990.

(4) Any local bill filed for introduction in the Senate or introduced in the House of Representatives by 5:00 p.m. on Tuesday, May 29, 1990, and accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and the bill is approved for introduction by each member of the Senate and House of Representatives whose district includes the area to which the bill applies.

(5) Selection, appointment or confirmation of members of State boards and commissions as required by law, including the filling of vacancies of positions for which the appointees were elected by the General Assembly upon recommendation of the President of the Senate, President Pro Tempore of the Senate, or Speaker of the House of Representatives.

(6) Any matter authorized by joint resolution passed during the 1990 Session by two-thirds majority of the members of the House of Representatives present and voting and by two-thirds majority of the members of the Senate present and voting. A bill or resolution filed in either house under the provisions of this subsection shall have a copy of the ratified enabling resolution attached to the jacket before filing for

introduction in the Senate or introduction in the House of Representatives.

(7) Any bills affecting any State or local pension or retirement system, filed for introduction in the Senate or introduced in the House of Representatives by 5:00 p.m. on Tuesday, June 5, 1990.

(8) Joint resolutions, House resolutions, and Senate resolutions pertaining to Section 5(10) of Article III of the Constitution of North Carolina.

(9) A joint resolution adjourning the 1989 Regular Session, *sine die*.

Sec. 2. The President Pro Tempore of the Senate or the Speaker of the House of Representatives may authorize appropriate committees or subcommittees of their respective houses to meet during the interim between sessions to review matters related to the State budget for the 1989-91 biennium, to prepare reports, including revised budgets, or to consider any other matters as the President Pro Tempore of the Senate or the Speaker of the House of Representatives deem appropriate, except that no committee or subcommittee of a house may consider, after the date of adjournment provided in Section 1 of this resolution and before the date of reconvening provided in Section 1 of this resolution, any bill, or proposed committee substitute for such bill, which originated in the other house. A conference committee may meet in the interim upon approval by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

STATE OF NORTH CAROLINA

DEPARTMENT OF STATE,

RALEIGH, AUGUST 12, 1989

I, RUFUS L. EDMISTEN, Secretary of State of North Carolina, hereby certify that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the office of the Secretary of State.

Rufus L. Edmisten

Secretary of State

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State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 75
CONCERNING THE RESPONSIBILITIES
OF THE MEMBERS AND PERSONNEL
OF THE NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

Questions have arisen as to whether and to what extent members of the North Carolina Wildlife Commission are charged with responsibility for Commission personnel decisions.

This Executive Order is published to put an end to the questions and to establish the perimeters within which Commission members and Commission personnel are to work in carrying out their respective responsibilities.

I

In response to my inquiry, the Attorney General has opined:

"We believe that the Executive Director has the authority to employ persons to fill positions on the Commission's staff without obtaining either the prior or subsequent approval of the Commission. The duties of the Executive Director are set out in G.S. §143-246 as follows:

> 'The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Commission and shall serve as the chief administrative officer of the said Commission. Subject to the approval of the Commission and the Director of the Budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary.'

"We construe the language of the second sentence quoted above to authorize the Director to employ persons to fill such positions as have been approved by the Commission and the Director of the Budget as necessary to carry out the programs of the Commission.

". . . The view that we have taken is most strongly supported . . . by the language of G.S. §143-243. That statute, in pertinent part, outlines specific responsibilities which the Commission is to fulfill in carrying out the functions and duties set forth in G.S. §143-239. The role of the Commission is to act in the broad area of policy and procedure in carrying out its program responsibilities, including the responsibility for 'organizing the personnel of the Commission.'

". . . Thus, the General Assembly has directed the Commission to establish and structure the staff which is to carry out the Commission's programs, policies, and procedures under the supervision of the Executive Director. In establishing and structuring its staff, the Commission must determine what types of positions are necessary for the task. The requirement of G.S. §143-243 is totally consistent, therefore, with our construction of the disputed language of G.S. §143-246."

II

Based upon the foregoing opinion and to carry out my constitutional duty to take care that the laws be faithfully executed, it is hereby ORDERED:

1. As stated in N.C.G.S. §143-239, the function, purpose and duty of the North Carolina Wildlife Resources Commission is to manage, restore, develop, cultivate, conserve, protect and regulate the wildlife resources of the State of North Carolina and to administer the laws relating to game, game and fresh water fishes and other wildlife resources enacted by the General Assembly, to the end that there may be provided a sound, constructive, comprehensive, continuing and economical game, game fish and wildlife program directed by qualified, competent and representative citizens who shall have knowledge of or training in the protection, restoration, proper use and management of wildlife resources. These functions, purposes and duties shall be the guideline against which the appropriateness of all Commission actions are to be measured.

2. As provided in N.C.G.S. §143-243 and N.C.G.S. §143-246, the Commission members responsibilities are to:

(a) Select and appoint an Executive Director and, if after appointing him the Executive Director ceases to please the Commission, to remove him from office.

(b) Organize the personnel of the Commission.

(c) Set the statewide policy of the Commission.

(d) Budget and plan the use of the Wildlife and Motorboat Funds, subject to the approval of the General Assembly and the Director of the Budget.

(e) When deemed appropriate hold public hearings where there is discussed matters of public concern regarding the wildlife resources of the State of North Carolina.

(f) Adopt rules as authorized by law.

(g) Recommend the budgetary and legislative needs of the Commission to the Governor through the Secretary of the Department of Natural Resources and Community Development.

(h) Make such reports to the Governor as are required by him or by law through the Secretary of the Department of Natural Resources and Community Development.

(i) Do all such other things as are required by law.

While under N.C.G.S. §143-240, nine of the thirteen members of the Commission are appointed from the geographical districts described in N.C.G.S. §143-240 and the other four members are appointed at large, all thirteen members of the Commission serve the State as a whole and without regard to the districts from which they may have been appointed. To the end that there may be uniformity of participation

by each Commission member within each district, Commissior members shall refrain from interfering with or otherwise being involved in the administration of the affairs of the Commission within the districts from which they are appointed or any other district. Commission members shall restrict their official activities regarding the administration of the affairs of the Commission to such matters as are brought before them through or by the Chairman while they sit as a body, or as brought before them through or by a committee or subcommittee chairman while sitting as a committee or subcommittee. If there are matters that any one or more members of the Commission feel are being inappropriately handled by the Chairman, those matters should be directed to the attention of the Governor through the Secretary of the Department of Natural Resources and Community Development.

3. As provided in and subject to the provisions of N.C.G.S. §143-243, the Chairman of the Commission shall guide and coordinate the official actions and official activities of the Commission in fulfilling its function, purpose and duty. In that connection and subject to the provisions of N.C.G.S. §143-243, the Chairman shall:

(a) Organize the Commission into such committees and subcommittees as are appropriate and appoint the chairman, vice-chairman and members thereof.

(b) Call, set the agenda for and preside at all regular and special meetings of the Commission.

(c) Act as the liaison between the Commission and the Executive Director of the Commission.

(d) Meet with and/or make reports to the Secretary of the Department of Natural Resources and Community Development

and the Governor when and as requested by them.

(e) Do all such other things as are required by law.

The Vice-chairman shall act in the absence of the Chairman.

4. As provided in N.C.G.S. §143-246, the Executive Director selected and appointed by the Commission shall be the chief administrative officer of the Commission. He shall:

(a) Without interference by the Chairman or other member of the Commission, select, appoint, promote, demote, transfer, remove and pass upon the grievances of such persons as he deems appropriate to fill the several positions approved by the Commission to carry out the Commission's function, purposes and duties.

(b) Direct and supervise the activities of the persons selected and appointed by him to fill such positions.

(c) Act as the liaison between Commission personnel and the Chairman of the Commission.

(d) Except when excused by the Commission, attend all Commission meetings and speak to the same as called upon by the Chairman.

(e) Make such reports to the Commission and the Chairman when, as often and in such detail as the Commission and Chairman shall require.

(f) Act as the official spokesperson for the Commission.

(g) Do all such other things as are required by law or as are appropriate to carry out the Commission's function, purpose and duty.

1. Copies of this Executive Order shall be distributed as provided by law. In addition copies shall be furnished to the Chairman and members of the North Carolina Wildlife Resources Commission, the Executive Director of the Commission, all Commission personnel, all persons deemed by the Executive Director to have an interest in Commission affairs and members of the public who request the same.

2. If any members of the Commission or the Executive Director of the Commission, now or hereafter feel that they cannot wholly support and carry out the letter and spirit of this Executive Order, it would be appropriate for them to resign from their positions.

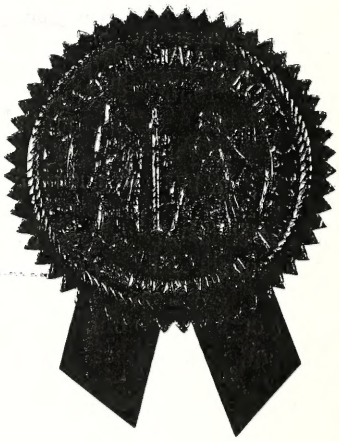
3. Violation of this Executive Order shall be justification for the removal of the Executive Director or any person serving as Commission personnel under the Executive Director.

Done in Raleigh, North Carolina this 12th day of August, 1988.

James G. Martin
Governor

ATTEST:

Thad Eure, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 76
AMENDMENT TO
EXECUTIVE ORDER NO. 18
EQUAL EMPLOYMENT OPPORTUNITY

Executive Order No. 18 as promulgated July 1, 1985, is amended to read:

It is the policy of the State of North Carolina to provide equal employment opportunities for all State employees and for all applicants for State employment without regard to race, religion, color, national origin, sex, age or handicap.

As an employer the State has and continues to recognize that efficient and effective government requires the talents, skills and abilities of all available human resources.

Policies have been adopted by the State Personnel Commission and an equal employment opportunity program which emphasizes taking positive measures has been established to assure more equitable and fair representation of all of our citizens.

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. EQUAL EMPLOYMENT POLICIES AND PROGRAMS

The State of North Carolina is committed to equal employment opportunity and the equal opportunity program to accomplish total

equal employment in and throughout all aspects of its workforce. The policies and programs that have been adopted by the Personnel Commission represent the commitment of the State and must be complied with fully by every State agency, department and university.

Section 2. ADMINISTRATION

A. Agencies

The head of each agency, department or university is responsible for assuring that these policies and programs are implemented fully and successfully throughout their organizations. Each agency or department employing 800 or more employees and each university shall appoint a full time Equal Employment Opportunity Officer who shall have direct access to the agency, department or university head in the event of or to report violations and shall provide the resources necessary to achieve program objectives. Those agencies or departments with less than 800 employees shall designate a part-time Equal Employment Opportunity Officer who shall have direct access to the agency or department head in the event of or to report violations and shall provide resources necessary to achieve program objectives.

The head of each agency, department or university shall take the positive measures that are established by the State Personnel Director, with approval of the State Personnel Commission, to ensure that equal opportunity is available in all areas of employment activities including recruitment, hiring, testing, training, transfer, performance appraisal, promotion, demotion, compensation, termination, layoffs and other terms, conditions or privileges of employment. Such measures shall be undertaken to improve the representation of women, minority group members, handicapped and older persons

in and throughout all levels of the State's workforce. Measures shall also be taken to ensure a work environment supportive of equal opportunity.

B. Office of State Personnel

The State Personnel Director is responsible for assisting the State's agencies, departments and universities in achieving equal employment opportunity objectives through: 1) establishing policies, guidelines and programs with the Personnel Commission's approval; 2) evaluating and monitoring program effectiveness; 3) providing technical assistance and training; 4) identifying and recommending steps to correct salary inequities among minorities, female and white male employees within occupational categories; and 5) providing instruction for managers and supervisors on management practices which support equal employment opportunity. Salary inequities found to exist will be called to the attention of the involved agency, department or university, for appropriate corrective action.

Section 3. REPORTS AND RECORDS

The State Personnel Director shall communicate with the Governor, the agency, department and university heads on the implementation and results of the Equal Employment Opportunity program and provide an annual analysis of the program's progress.

Section 4. CITIZEN CONTRIBUTION

The North Carolina Human Relations Council shall advise and assist the Governor and the Office of State Personnel in the implementation of the State's Equal Employment Opportunity program, thereby assuring citizen contributions to the program.

Section 5. VETERANS' PREFERENCES

Nothing in this Order shall be construed to repeal or modify any Federal, State, or local laws, rules or regulations creating special rights or preferences for veterans.

Section 6. PRIOR ORDERS

All prior Executive Orders or portions of prior Executive Orders inconsistent are hereby repealed.

Done in the Capital City of Raleigh, this the 14th day of September, 1988.

James G. Martin
Governor

ATTEST:

Thad Eure, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 77
AMENDMENT TO
EXECUTIVE ORDER NO. 34
GOVERNOR'S PROGRAM TO ENCOURAGE BUSINESS ENTERPRISES
OWNED BY MINORITY, WOMEN AND HANDICAPPED PERSONS

Executive Order No. 34, as promulgated February 27, 1987, is amended to read:

It is my policy that the State of North Carolina shall enhance and promote economic opportunities for all of its citizens without regard to race, gender or handicap.

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. ESTABLISHMENT

(a) There is hereby established the Governor's Program to Encourage Business Enterprises Owned and Controlled by Minorities, Women and Handicapped Persons.

(b) The Program shall be coordinated by the Governor's Special Assistant for Minority Affairs and administered by the Division of Purchase and Contract, the State Construction Office and the State Property Office. This Program shall have three components, the Purchase and Contract component, the State Construction component and the State Real Estate Acqui-

sitions component.

(c) The purposes of the Program are as follows:

(1) to increase the amount of goods and services acquired by the State from businesses owned and controlled by minorities, women and handicapped persons;

(2) to increase the amount of construction contracts awarded to minority, women and handicapped contractors and sub-contractors;

(3) to ensure the absence of barriers that reduce participation of minorities, women and handicapped persons in the State's purchasing process;

(4) to ensure the absence of barriers that reduce participation of minority, women and handicapped contractors and sub-contractors in the construction contracting process;

(5) to encourage the purchasing officers within the State's agencies, departments and universities and the State Construction Office and the State Property Office to identify prospective minorities, women and handicapped vendors and service providers, construction contractors and sub-contractors and related professionals, and real estate agents, brokers and appraisers;

(6) to ensure the absence of barriers that reduce the participation of minority, women and handicapped persons in any and all aspects of the real estate acquisition process;

(7) to promote awareness among minorities, women and handicapped persons of opportunities to do business with State government.

(d) The Program objective for fiscal year 1988-89 is for businesses owned and controlled by minorities, women and handicapped persons to receive a minimum of four percent by amount of the State's purchases of goods and services under the Purchase and Contract component.

(e) The objectives of the State Construction component are to establish policies and procedures to encourage the participation of minorities, women and handicapped in the State's construction contracts and sub-contracts and to accumulate data to allow the establishment of reasonable goals for such participation in the future.

(f) The objectives of the Real Estate Acquisition component are to establish written real estate acquisition policies and procedures to effect the purposes of this Executive Order.

Section 2. ADMINISTRATION

(a) The Secretary of Administration and each agency, department and university head shall provide requested information and reports to the Governor's Special Assistant for Minority Affairs for the implementation of this Program.

(b) The Division of Purchase and Contract shall assist each agency, department and university in developing a plan and provide technical assistance to reach the set objectives related to the purchase of goods and services.

(c) Each agency, department and university head shall designate from its staff coordinators for the Purchase and Contract, State Construction and Real Estate Acquisitions components of the Program. The names of said coordinators shall be forwarded to the Deputy Secretary of the Department of Administration for Government Operations.

(d) The Director of the Office of State Construction in cooperation with the Governor's Special Assistant for Minority Affairs, shall develop a plan for achieving the objectives of the State Construction component.

(e) The Director of the State Property Office in cooperation with the Governor's Special Assistant for Minority Affairs shall develop a plan for achieving the objectives of the Real Estate Acquisitions component.

(f) The Minority Business Development Agency, Small Business Division of the Department of Commerce shall continue to certify that businesses owned and controlled by minorities, women and handicapped persons are, in fact, owned and controlled by those so classified. This agency shall also provide technical assistance to businesses interested in the Program.

(g) The Minority Business Development Agency, Small Business Division of the Department of Commerce, together with the Division of Purchase and Contract and the State Construction Office, shall prepare and make available a directory of businesses owned and controlled by minorities, women and handicapped persons to facilitate the accomplishment of this Program.

Section 3. REPORTING AND EVALUATION

(a) The Division of Purchase and Contract, the Office of State Construction and the State Property Office shall report purchase and contract and sub-contract opportunities and awards on a quarterly basis to the Governor's Special Assistant for Minority Affairs.

(b) The Governor's Special Assistant for Minority Affairs shall monitor and evaluate the Program and report the same on a quarterly basis to all agency, department and university heads. He shall also conduct review meetings with all agencies, department and university heads or their designees on an as needed basis.

(c) The Director of the Division of Purchase and Contract, the Director of the State Construction Office and the Director of the State Property Office shall develop and implement guidelines and procedures for ensuring that the State's contracts contain requirements that its contractors comply with federal EEO requirements or its equivalent.

Section 4. PRIOR ORDERS

All prior Executive Orders or portions of prior Executive Orders inconsistent herewith are hereby repealed.

Section 5 IMPLEMENTATION AND DURATION

This Executive Order shall become effective immediately and will expire in accordance with North Carolina law two years from the date on which it is signed. It is subject to reissuance or extension at the discretion of the Governor.

Done in Raleigh, North Carolina, this 1st day of November, 1988.

James G. Martin
James G. Martin
Governor

ATTEST:

Thad Eure, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 78
GOVERNOR'S TASK FORCE ON INJURY PREVENTION

Sudden and unexpected injuries represent one of the most serious health problems facing the citizens of this State. The loss of life, economic loss, and the personal tragedy caused by such injuries on and off the job demand that a concerted effort be made to better understand this problem and seek solutions to it.

In order to better prevent accidental injuries and to ensure that the best rehabilitative methods and resources are available to those who are injured, a systematic approach to injury prevention and rehabilitation by all segments of our society is needed.

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1 ESTABLISHMENT

The Governor's Task Force on Injury Prevention, hereinafter "The Task Force", is hereby established. The Task Force shall

consist of not more than 25 persons appointed by the Governor to serve at the pleasure of the Governor. All vacancies shall be filled by the Governor. The Governor shall designate one member of the Task Force to serve as chairman.

Section 2 MEMBERSHIP

The membership of the Task Force shall include, but not be limited to, representatives of the following agencies and groups:

1. Doctors and other Health Care Providers;
2. Pharmacists;
3. Health Directors;
4. Trauma Professionals;
5. Experts in the Field of Occupational Safety;
6. Representatives of Business and Industry;
7. North Carolina Department of Human Resources;
8. North Carolina Department of Transportation;
9. North Carolina Department of Insurance;
10. North Carolina Department of Crime Control and Public Safety;
11. North Carolina Department of Commerce;
12. The North Carolina General Assembly; and
13. Other Persons Interested in the Prevention of Injuries.

Section 3 FUNCTIONS

A. The Task Force shall meet regularly at the call of the Chairman.

B. The Task Force shall have the responsibility of developing and delivering to the Governor a long-range plan designed to decrease the number of injuries in North Carolina and

to improve the prognosis of citizens affected by injuries. This plan shall include recommendations that will address:

1. Measures to increase public awareness of the problem of injury;
2. Development and coordination of research in bio-mechanics as well as injury causation, incidence, distribution;
3. Coordination of resources that possess professional expertise in injury prevention and control;
4. Integration of national, state, and local program activities;
5. Legislative recommendations necessary to implement a comprehensive injury prevention and control program;
6. Budgetary requirements necessary to provide a comprehensive injury control program in North Carolina.

Section 4 ADMINISTRATION

A. Administration support and staff for the Task Force shall be provided by the Department of Human Resources, Division of Health Services.

B. Members of the Task Force shall be reimbursed for necessary travel and subsistence expenses as authorized under G.S. 138-5 and 138-6. Funds for the reimbursement of such expenses shall be made available from funds authorized by the Department of Human Resources, Division of Health Services.

C. It shall be the responsibility of each cabinet department to make every reasonable effort to cooperate with the Task Force in carrying out the provisions of this order.

Done in the Capital City of Raleigh, this the 14th day of September, 1988.

James G. Martin
Governor

ATTEST:

Thad Eure, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 79
NORTH CAROLINA SMALL BUSINESS COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Executive Order Number 10 dated June 28, 1985, is amended to read as follows:

There is hereby established the North Carolina Small Business Council. The Council shall be composed of at least 20 members with at least one member residing in each congressional district. All members shall be appointed by the Governor and serve at the pleasure of the Governor. The Governor shall designate one of the members as Chairman and one as Vice-Chairman. In addition to the minimum number of 20, the members shall include representatives of the National Federation of Independent Business, N. C. Retail Merchants Association, the United States Small Business Administration and North Carolina Citizens for Business and Industry.

The Council shall meet at least once in each quarter and may hold special meetings at any time at the call of the Chairman, the Governor or the Secretary of Commerce.

The members of the Council shall receive per diem, reimbursement for travel and subsistence expenses for their services in accordance with State subsistence allowance.

The purposes of the North Carolina Small Business Council are:

(a) To support the Governor's small business legislative initiatives and to solicit support in an effort to effect passage of the initiatives.

(b) To prepare and present recommendations to the Governor and General Assembly for changes in statutes, rules and regulations, including the State tax structure, which affect small businesses in North Carolina.

(c) To make recommendations to the Governor and General Assembly for new legislation, agency programs and other actions needed to assist small business growth and development.

(d) To assist the Small Business Development Division of the Department of Commerce in determining the need for programs for small businesses in education, training, marketing, funding resources, technological assistance and related areas.

The Council is authorized to conduct interviews and solicit non-confidential information to carry out the provisions of (a), (b), (c) and (d) above.

The Small Business Development Division of the Department of Commerce shall provide staff and support services for the Council.

It shall be the responsibility of each department or agency head to make every reasonable effort for his or her department to cooperate with the North Carolina Small Business Council to carry out the provisions of this Order.

This Order shall be effective immediately and shall remain in effect until June 30, 1990, unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this 5th day of January, 1989.

James G. Martin
Governor

ATTEST:

Thad Eure, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 80
NORTH CAROLINA DRUG CABINET

The trafficking and abuse of illegal drugs in our society represents a problem so serious and so pervasive that it threatens to undermine all the major goals of our State.

It is a costly disease which takes its toll in wasted education, degraded health and jumbled productivity, as well as in the criminal activity undertaken to pay for it.

We are still just beginning to come to grips with this critical problem.

To raise this concern to a far higher commitment, I hereby establish a team of Cabinet rank officials to develop and recommend the most effective strategy for North Carolina's war on drugs.

THEREFORE, by authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. ESTABLISHMENT

There is hereby established the North Carolina Drug Cabinet.

Section 2. MEMBERSHIP

(a) The Cabinet shall be composed of the following officials of the State of North Carolina:

(i) the Lieutenant Governor;

(ii) the Attorney General;

(iii) the Superintendent of Public Instruction;

(iv) the Secretary of the Department of Human Resources;

(v) the Secretary of the Department of Crime Control and Public Safety;

(vi) the Secretary of the Department of Commerce;

(vii) the Secretary of the Department of Correction;

(viii) the Secretary of the Department of Transportation.

(b) The Lieutenant Governor shall be Chairman of the Cabinet.

Section 3. MEETINGS

(a) The Cabinet shall meet at such times and locations as designated by the Chairman but not less than monthly. All members shall attend all meetings in person unless prevented from doing so by illness or by their official duties having priority over their responsibilities as Cabinet members, in which case absent members may be represented by their designees.

(b) For the purpose of conducting business a quorum of the Cabinet shall consist of six members or their designees.

Section 4. PURPOSE

(a) The Cabinet shall prepare and submit forthwith to the Governor a proposed comprehensive plan for effectively combatting trafficking and illegal drug use in North Carolina, including appropriate punishment, and for the education and treatment of those citizens suffering from drug abuse and dependency.

(b) Prior to submitting the comprehensive plan to the Governor, the Cabinet may develop and recommend to the Governor such intermediate measures in the areas of drug abuse prevention, treatment, law enforcement and punishment as the Cabinet deems appropriate.

Section 5. ADVISORY COUNCILS

The Governor's Council on Alcohol and Drug Abuse Among Children and Youth established by Executive Order 23 and the Governor's Inter-Agency Advisory Team on Alcohol and Other Drug Abuse created by Executive Order 53 shall act as advisors to the Cabinet. The Cabinet may establish other advisory councils as needed to provide the Cabinet with expert advice in specified areas such as law enforcement related activities, health treatment and education.

Section 6. COOPERATION OF STATE AGENCIES

On request all agencies and departments of the State of North Carolina shall cooperate with the Cabinet in the development of the comprehensive plan, and in the development and recommendation to the Governor of such immediate actions as determined necessary under Section 4(b) of this Order.

Section 7. ADMINISTRATIVE SUPPORT AND EXPENSES

Those agencies and departments represented in the Cabinet shall provide such staff and administrative support as may be requested by the Cabinet.

Section 8.

This order shall be effective immediately and shall remain in effect until terminated.

Done in Raleigh, North Carolina, this the 10th day of January, 1989.

James G. Martin
Governor

ATTEST:

Rufus Edmisten, Secretary of State



State of North Carolina

JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 81
AMENDMENT TO EXECUTIVE ORDER NUMBER 80
NORTH CAROLINA DRUG CABINET

By authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 2 of Executive Order Number 80 entitled "North Carolina Drug Cabinet" is amended by adding to the membership of the Cabinet the Secretary of the Department of Administration.

All other sections and provisions of Executive Order Number 80 shall remain in effect.

This order shall be effective immediately and shall remain in effect until terminated.

Done in Raleigh, North Carolina, this the 12th day of January 1989.

James G. Martin
James G. Martin
Governor

ATTEST:
Rufus L. Edmisten
Rufus L. Edmisten, Secretary of State

State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 82
EXTENDING EXPIRATION DATE OF EXECUTIVE ORDER NUMBER 1
TO JANUARY 31, 1991

Executive Order Number 1 issued January 31, 1985, as amended by Executive Order Number 30 and extended by Executive Order Number 33, expires on January 29, 1989. This executive order should continue in effect.

NOW, THEREFORE, IT IS ORDERED, that Executive Order Number 1 dated January 31, 1985, be extended up to and through January 31, 1991.

This action is effective on the 29th day of January, 1989.

James G. Martin
James G. Martin
Governor

ATTEST:
Rufus L. Edmisten
Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 83
OFFICE OF STATE PRINTING

It is my policy that the departments and agencies of the State shall perform their responsibilities in the most cost efficient manner commensurate with the effective performance of their responsibilities.

Therefore, pursuant to the authority vested in me as Governor by the Constitution and laws of North Carolina and to the end that said policy may be fulfilled, it is ORDERED:

1. There is created within the Department of Administration an Office of State Printing.

2. The function of the Office of State Printing shall be to coordinate all printing done for the following departments and agencies of the State that heretofore has been coordinated by the Department of Administration, Division of Purchase and Contract:

Department of Administration
Department of Commerce
Department of Correction
Department of Crime Control and Public Safety
Department of Cultural Resources
Department of Human Resources
Department of Natural Resources and Community Development
Department of Revenue
Department of Transportation
Office of State Personnel
Office of the Governor
Office of State Budget

3. In coordinating the printing for said departments and agencies the Office of State Printing shall:

(a) Maximize the usage of the printing equipment and facilities owned by the State.

(b) Enhance the efficiency of the printing equipment and facilities owned by the State by directing printing to the equipment and facilities most appropriate for the printing to be done.

(c) In those instances in which printing cannot be done best by printing equipment and facilities owned by the State, coordinate with the Division of Purchase and Contract in awarding printing contracts to private vendors.

4. To enable it to carry out its responsibilities under this Executive Order the Office of State Printing shall:

(a) Adopt and implement appropriate policies and guidelines; and

(b) Continuously evaluate the State's printing needs and the most cost efficient ways of meeting them and make recommendations concerning the same.

Done in Raleigh, North Carolina, this 8th day of February, 1989.

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten, Secretary of State



State of North Carolina

JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 84
AMENDMENT TO EXECUTIVE ORDER NUMBER 79
NORTH CAROLINA SMALL BUSINESS COUNCIL

The first full paragraph of Executive Order Number 79 dated January 5, 1989, is amended to read as follows:

> There is hereby established a North Carolina Small Business Council. The Council shall be composed of at least 20 members with at least one member residing in each congressional district. All members shall be appointed by the Governor and serve at the pleasure of the Governor. The Governor shall designate one of the members as chairman and one as vice-chairman. In addition to the minimum number of 20, the members shall include representatives to the National Federation of Independent Businesses, the North Carolina Retail Merchants' Association, the United States Small Business Administration, North Carolina Citizens for Business and Industry and the North Carolina Food Dealers Association.

All other provisions of Executive Order Number 79 shall remain in effect.

Done in the capital city of Raleigh, North Carolina this 10th day of February, 1989.

James G. Martin
James G. Martin
Governor

ATTEST: Rufus L. Edmisten
Rufus L. Edmisten, Secretary of State

State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 85
AMENDING EXECUTIVE ORDER NO. 53
GOVERNOR'S INTER-AGENCY ADVISORY TEAM
ON ALCOHOL AND OTHER DRUG ABUSE

By the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1: Executive Order No. 53 is amended to read as follows:

"It has been made to appear to me as follows:

1. The dual dangers of alcohol and other drug abuse pose a growing threat to the continued progress and prosperity of North Carolina. The catastrophic effects of these hazards touch all segments of our population.

2. Several state agencies maintain alcohol and drug abuse programs, and to combat alcohol and drug abuse most effectively, it is essential for such state agencies to coordinate the development of these programs and delivery of these services.

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. ESTABLISHMENT

The Governor's Interagency Advisory Team on Alcohol and Drug Abuse, hereinafter called the "Advisory Team," is hereby

established. The Advisory Team shall consist of not less than eleven members and shall include the following:

Deputy Secretary of the Department of Correction, or his designee;

Executive Director of the Governor's Crime Commission, or his designee;

Director of the Division of Mental Health, Mental Retardation and Substance Abuse Services in the Department of Human Resources or his designee;

Director of Division of Youth Services in the Department of Human Resources, or his designee;

Assistant Director of State Bureau of Investigation, or his designee;

Director of Alcohol and Drug Defense in the Department of Public Instruction, or his designee;

Director of Youth Advocacy and Involvement Office, or his designee;

Director of the Governor's Highway Safety Program, or his designee;

The Secretary of the Department of Commerce or his designee; and

The Lieutenant Governor or his designee.

The Chairman of the Governor's Council on Alcohol and Drug Abuse Among Children and Youth shall be the Chairman of the Advisory Team and the members shall serve at the pleasure of the Governor.

Section 2. FUNCTIONS

(a) The Advisory Team shall meet on at least a quarterly basis and may hold special meetings at any time at the call of the Governor, the chairperson, or three of its members.

(b) The Advisory Team shall have the following duties:

1. Coordinate existing state alcohol/drug programs and services in order to eliminate duplication and maximize the efficient use of resources;

2. Provide guidance and direction in the expansion, development, and implementation of new alcohol and other drug abuse programs;

3. Review the General Statutes of North Carolina applicable to alcohol and other drug abuse and report to the Governor on proposed legislation that may be needed;

4. Coordinate and cooperate with the North Carolina Drug Cabinet to the end that the work of both agencies shall be the most effective.

5. Perform such other duties as assigned by the Governor.

Section 3. ADMINISTRATION

(a) The Department of Administration shall provide administrative support and staff as may be required by the Advisory Team.

(b) Each agency shall defray any costs incurred by the appointee in carrying out the functions of this appointment.

(c) It shall be the responsibility of each Cabinet Department to make every reasonable effort to cooperate with the Advisory Team in carrying out the provisions of this order.

(d) The Division of Mental Health, Mental Retardation and Substance Abuse Services shall provide funding for the travel and subsistence costs incurred by the Chairman of the Advisory Team.

Section 4. EFFECTIVE DATE AND EXPIRATION

This Executive Order shall become effective immediately and will expire in accordance with North Carolina law two years from the date it is signed. It is subject to reissuance at expiration."

Section 2: This Executive Order shall become effective immediately.

Done in the Capital City of Raleigh, this the 1st day of March, 1989.

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 86
MINIMIZATION OF SOLID, HAZARDOUS, AND INFECTIOUS WASTE AND THE CONTROL OF TOXIC AIR POLLUTANTS

The waste disposal problem in North Carolina is enormous. All types of disposal practices -- from incineration to wastewater discharge to landfilling -- are adversely impacted by the sheer volumes of waste which are becoming greater per person each year.

Clearly, North Carolina must have adequate waste treatment and disposal capacity. Such facilities must be properly located and designed, well operated, and extensively monitored to ensure that public health and the environment are protected, including limitations on toxic air pollutant emissions. But along with additional waste treatment and disposal capacity comes an equal if not greater need to reduce the amount of wastes generated in the first place.

First and foremost in any long-term solution to the waste

problem is an emphasis on waste stream reduction. No law, regulation, or program aimed at the environmentally safe disposal of wastes of any sort will ultimately be successful if it does not include as its fundamental basis a vigorous and sustained conservation effort, including incentives, education, market development, and source reduction techniques such as recycling, recovery, and reuse. Simply disposing of wastes is no longer appropriate. Instead, wastes must be managed with emphasis on conservation. Conservation must be the first thought and continuing basis of all environmental and public health protection programs.

ACCORDINGLY,

WHEREAS, the quality of the environment in North Carolina is a key element in the continued growth and progress of the State; and

WHEREAS, the State of North Carolina produces more waste than it has capacity to treat or destroy; and

WHEREAS, as economic and population growth continue, the environment is relied upon more heavily each year to accept wastes which accompany such growth; and

WHEREAS, it is essential that the State have adequate waste treatment and disposal facilities; and

WHEREAS, incineration may play an integral role in an environmentally sound waste management system; and

WHEREAS, effective control of toxic air pollutants is an

essential and key element to ensure adequate protection for human health and the environment; and

WHEREAS, as the most desirable waste management strategy to be undertaken, North Carolina has stated its commitment to prevention, minimization, and recycling of wastes before they impact the State's environment and is committed to reduce its dependence on landfills as a means of solid waste disposal by the year 2006;

NOW THEREFORE, By the authority vested in me by the Constitution and laws of North Carolina, and consistent with statutory authorizations and powers it is ORDERED:

That the State shall expand its commitment to preventing, minimizing, and recycling of wastes by incorporating waste reduction in all decisions by pollution control authorities in the following manner:

SECTION 1.

(a) As a condition for the issuance thereof, applicants for permits, permit modifications and permit renewals for the discharge of wastewater or incinerator emissions attendant to the treatment and disposal of solid and hazardous wastes, shall demonstrate to the satisfaction of the Secretary of the Department of National Resources and Community Development, or his designee, that, to the extent reasonably technologically and economically achievable, (i) the applicant has undertaken source

reduction and recycling techniques and methods to reduce the volume, pollutant level and/or toxicity of the same and (ii) the wastewater discharge and incinerator emission levels sought in the applications are the lowest achievable after waste reduction; and

(b) The State shall exercise its authority to obtain, review and certify information from each facility that generates, treats, stores, recycles or disposes of hazardous waste to ensure that it has a Waste Minimization Program in affect as required under Sections 3002(b) and 3005(H) of the Hazardous and Solid Waste Amendments of 1984; and

Section 2.

Consistent with its statutory authorities and powers, the Environmental Management Commission shall expedite the development and promulgation of rules sufficient to control the emissions of toxic air pollutants from waste incinerators and utilize its existing statutory authority to ensure that any such permits issued after the effective date of this Order provide adequate control of toxic air emissions.

Section 3.

Further, consistent with its statutory authorities and powers, the Environmental Management Commission shall expedite the development and promulgation of ambient air standards for toxic pollutants.

Section 4.

All Executive Orders or portions of Executive Orders inconsistent herewith are hereby rescinded.

Done in Raleigh, North Carolina this 1st day of March, 1989.

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 87
AMENDING EXECUTIVE ORDER NO. 75
CONCERNING THE RESPONSIBILITIES OF
THE MEMBERS AND PERSONNEL OF THE
NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

Pursuant to the authority vested in me as Governor by the Constitution and the laws of North Carolina, it is ORDERED:

Section 1: Paragraph III-3 of Executive Order No. 75 is amended to read as follows:

"Violation of this Executive Order shall be justification for the removal of members of the Commission, the Executive Director or any person serving as Commission personnel under the Executive Director."

Section 2: This Executive Order shall become effective immediately.

Done in Raleigh, North Carolina, this 27th day of April, 1989.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 88
COLUMBUS VOYAGES QUINCENTENARY COMMISSION

Recognition of the heritage of the United States of America is a vital part of good citizenship. The year 1992 marks the five hundredth anniversary of the voyages of discovery by Christopher Columbus. His voyages joined the New World to the Old and were decisive events at the dawn of the modern era of human history.

It is appropriate that citizens in the State of North Carolina join with their fellow Americans throughout our Nation to plan, promote, and assist statewide and local celebrations and observances of this important event.

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

(a) The Columbus Voyages Quincentenary Commission is hereby established under the Department of Administration. The Commission shall be composed of not less than twelve (12) members appointed by the Governor to serve at the pleasure of the Governor

throughout their terms. Of the members, one shall be the Director of the Division of Archives and History in the North Carolina Department of Cultural Resources, who shall serve as the liaison between the national and state commissions. Another shall be the Secretary of the Department of Cultural Resources or her designate. Members shall be appointed for the life of the Commission. Vacancies shall be filled by the Governor. The Governor shall designate one of the members as chairman and at least one member as vice-chairman.

(b) The Commission shall meet at the call of the Chairman, at the times and places which he or she deems appropriate.

(c) The Commission shall have the following duties:

(1) Coordinate activities through the Director of the Division of Archives and History with the national Christopher Columbus Quincentenary Jubilee Commission created by P.L. 98-375;

(2) Procure supplies, services, and property, and make contracts, in fulfillment of its purpose;

(3) Prescribe regulations under which the Commission may accept, use, solicit, and dispose of donations of money, property, or personal services;

(4) Plan and develop appropriate ceremonial and educational activities to commemorate the quincentenary of the voyages of Columbus, including a limited number of projects to be undertaken by the State;

(5) Provide advice and assistance to private organizations and local governments for organization of and participation in ceremonial and educational activities commemorating the quincentennial;

(6) Serve as a clearinghouse for the collection and dissemination of information about quincentennial events and plans in the State;

(7) Encourage State agencies to develop quincentenary programs such as the creation of public programs in State and local parks, museums, and libraries;

(8) Seek cooperation, advice, and assistance from both private and governmental agencies and organizations, including local governments, learned societies, academic institutions and historical, patriotic, philanthropic, civic, and professional groups; and

(9) Submit an annual report to the Governor until such Commission terminates. The first such report shall include specific recommendations for commemoration and coordination of quincentenary activities.

(d) Administrative support for this Commission shall be provided by the Department of Administration. Upon the request of the Commission, the head of any state agency may assign any employee of such agency to assist the Commission in its duties under this Executive Order. Such assistance shall be without reimbursement by the Commission to the agency.

(e) Members of the Commission may be reimbursed for necessary travel and subsistence expenses as authorized by N.C.G.S. 138-5. Members who are State officials or employees shall be reimbursed as authorized by N.C.G.S. 138-6. Funds for reimbursement of such expenses shall be made available from funds authorized to the Department of Administration.

(f) This order shall be effective immediately and shall terminate on March 1, 1993.

Done in Raleigh, North Carolina this 8th day of May, 1989.

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 89
TRANSFERRING THE STATE EMPLOYEES' ADVISORY GROUP (SEAG)
TO THE OFFICE OF STATE PERSONNEL

The State Employees' Advisory Group (SEAG) was created by Governor James B. Hunt's Management Directive on Productivity Number 4. It is now under the supervision and control of the Governor's Management Council in the Department of Administration. It was created to promote employee involvement in the improvement of production and the quality of work life in State government.

By the authority vested in me by the Constitution and laws of North Carolina, NOW, THEREFORE, IT IS ORDERED:

Section 1. SUPERVISION

The functions and powers of the Secretary of the Department of Administration relating to the administration of the State Employees' Advisory Group (SEAG) are hereby transferred to the Employee Relations Division of the Office of State Personnel.

These functions, powers and duties include any duties that are currently or may in the future be assigned to SEAG, either by statute or by agreement among the various State Departments, Commissions, or other entities of State government.

Section 2. MEMBERS

The current SEAG members shall continue to serve and future members shall continue to be selected by the procedures now in place. Vacancies shall be filled by the person responsible for the former appointment to the vacant position.

This Executive Order is effective immediately and shall remain effective unless rescinded by further Executive Order.

This the 8th day of May, 1989.

James G. Martin
James G. Martin
Governor

ATTEST:

Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 90
GOVERNOR'S ADVISORY COUNCIL ON LITERACY

North Carolina's economy is changing in fundamental ways. Employment in agriculture and low-skill manufacturing is declining. This decline is offset by new jobs in other industries which require different, higher-level skills. Unless effective steps are taken to upgrade the basic skills of the existing and future work force, North Carolina's economy will suffer.

Improving the literacy of North Carolina's citizens is key. Nonreading adults in North Carolina are likely to be locked in low-paying jobs. These adults do not possess the reading abilities necessary to learn new, higher-level skills.

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. ESTABLISHMENT

The Governor's Advisory Council on Literacy, hereinafter "The Council," is hereby established to replace the Governor's Literacy Council created by Executive Order Number 32. The Council shall consist of not less than 19 persons appointed by the Governor.

Section 2. MEMBERSHIP

The membership of the Council shall include, but not be limited to, the following members:

1. The President of the Community College System, or someone designated by that person, and one representative nominated by the State Board of Community Colleges;
2. The Director of the North Carolina Literacy Association, or someone designated by that person, and one representative nominated by the Board of Directors of the North Carolina Literacy Association;
3. One representative of another literacy program;
4. The State Superintendent of Public Instruction, or someone designated by that person;
5. One representative of the State Senate to be nominated by the Lieutenant Governor;
6. One representative of the State House of Representatives to be nominated by the Speaker of the House;
7. Five representatives of business and industry to be appointed by the Governor;
8. One representative of the University of North Carolina to be nominated by the President of that University;
9. One representative of the Association of Private Colleges and Universities to be appointed by the Governor; and
10. Four members-at-large to be appointed by the Governor.

Members of the Council shall serve two-year staggered terms, except that nine members of the initial Council shall be appointed for one-year terms, and the remainder shall be appointed for two year terms. The Governor shall determine which members serve these initial terms.

Except for the President of the Community College System, the Director of the North Carolina Literacy Association and the State Superintendent of Public Instruction or their designees, all members serve at the pleasure of the Governor. All vacancies shall be filled by the Governor. When filling vacancies involving persons nominated and appointed pursuant to subsections 1, 2, 5, 6, 8 above, the Governor shall solicit replacement nominations from the appropriate authority. The Governor shall designate one member to serve as Chairperson of the Council.

Section 3. FUNCTIONS

A. The Council shall meet regularly at the call of the Chairperson.

B. The Council shall develop and deliver to the Governor a long-range plan designed to expand literacy education efforts in the workplace. The plan shall designate the various State agencies which must cooperate to implement these efforts. Funding for this plan shall be included in the Council's recommended comprehensive program budget.

C. The Council may establish an adjunct Technical Committee composed of literacy service providers, instructors, administrators, and program participants. Such a committee would serve as a source of practical advice regarding policy initiatives

being considered by the Council. The Governor shall designate the members and Chairperson of such a Committee. The Committee would meet at the call of either its Chairperson or the Council's Chairperson.

D. The Council shall seek to establish a Literacy Trust Fund. It shall recommend the goals, the areas of eligible activity, the disbursement mechanisms, and the funding criteria for such a Fund to the Governor.

E. The Council shall develop and deliver to the Governor financial and service recommendations for State literacy programs and resources. In this regard, the Council shall build on the information previously gathered by the Governor's Commission on Literacy to review the existing:

1. Literacy services and resources;
2. Numbers of persons served by these services;
3. Gaps in literacy service;
4. Coordination among literacy services;
5. Characteristics and needs of the target populations for literacy services; and
6. Delivery of literacy services to these populations.

F. The Council shall propose to the Governor (1) a comprehensive program budget for all literacy activities in every State agency, (2) program performance objectives, and (3) timetables for accomplishing goals. In proposing a literacy program budget, the Council shall give a high priority in funding to the research and development of promising innovative literacy programs.

G. The Council shall foster cooperation and coordination among state agencies and private sector literacy services to achieve the maximum possible impact from existing programs and eliminate duplicative efforts.

H. The Council shall work to develop methods to measure literacy program performance and student progress in order to more precisely monitor program achievements.

I. The Council shall work to increase the professional capabilities of existing literacy educators. The Council shall also encourage development of professional, full-time literacy educators. In this regard, the Council shall arrange to provide statewide technical assistance in pedagogy, literacy program design, and curriculum development for adult learners. The Council shall also develop mechanisms to provide practical assistance and support to volunteer teachers.

J. The Council shall promote literacy programs and raise awareness of illiteracy among both the general public and the business community.

K. The Council shall foster coordination of current state agency literacy programs in order to most effectively reach those in need of literacy services. The Council shall work to develop several varied intervention strategies for the population of adult learners.

L. The Council shall develop programs for family literacy education for the parents of children at risk of illiteracy.

Section 4. ADMINISTRATION

A. Administrative support and staff for the Council shall be provided by the Department of Administration.

B. Members of the Council shall be reimbursed for necessary travel and subsistence expenses as authorized under N.C.G.S. 138-5 and 138-6. Funds for the reimbursement of such expenses shall be made available from funds authorized to the Department of Administration.

C. Each cabinet department shall make every reasonable effort to cooperate with the Council to implement the provisions of this order.

Section 5. IMPLEMENTATION AND DURATION

This Executive Order shall become effective immediately and shall expire in accordance with North Carolina law two years from the date on which it is signed. It is subject to reissuance or extension at the discretion of the Governor.

Done in Raleigh, North Carolina, this 18th day of May, 1989.

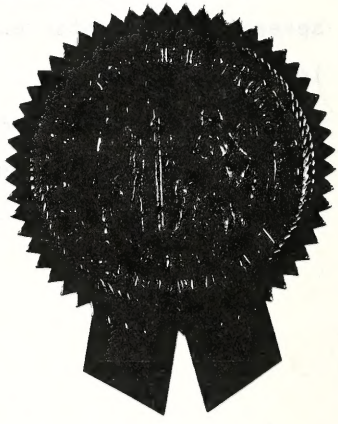
James G. Martin

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten

Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 91
NORTH CAROLINA MOTOR CARRIER ADVISORY COUNCIL

The motor carrier industry is an important industry to North Carolina and to the United States. Coordination with other states' laws and federal laws benefit the motor carrier industry, businesses served by the motor carrier industry, and the citizens of North Carolina.

NOW, therefore, by authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. ESTABLISHMENT

There is hereby created and established the North Carolina Motor Carrier Advisory Council. The Advisory Council shall be composed of not less than seventeen (17) members as follows:

The Secretary of the Department of Transportation or his designee;

The Highway Administrator or his designee;

Commissioner, Division of Motor Vehicles or his designee;

Director, Motor Fuel Division, Department of Revenue or designee;

Director, Governor's Highway Safety Program or designee;

North Carolina Utilities Commission, Transportation Division representative;

North Carolina State Highway Patrol representative;

At least six members from the motor carrier industry representing the following areas: heavy duty and rigging, truckload, less than truckload, trucking association, private carrier, tank/bulk;

Representative of the state bus association;

At least three (3) members representing the interests of intra-state truck users.

National Motor Carrier Advisory Committee members shall serve as ex-officio members of the North Carolina Council.

All public members shall be appointed and serve at the pleasure of the Secretary of the Department of Transportation. They shall serve two-year terms.

The Secretary of the North Carolina Department of Transportation or his designee shall chair the Advisory Council.

The Secretary of Transportation may designate a co-chair from among the public members of the Council.

Section 2. DUTIES

The Advisory Council shall have the following duties:

1. To review current laws, policies, and procedures regarding taxation, regulation, and safety of the motor carrier industry in North Carolina;

2. To determine the extent to which these laws, policies, and procedures are consistent with those in other states;

3. To work cooperatively with the National Governors' Association, the Federal Highway Administration, and other organizations in an effort to streamline and improve uniformity and efficiency among the states in motor carrier taxation, regulation, and other related matters;

4. To advise the Governor and make recommendations concerning the motor carrier industry.

Section 3. ADMINISTRATION

The Department of Transportation shall provide the planning, technical, and administrative support for the Advisory Council.

Section 4. EXPENSES

Members of the Council shall be compensated for their per diem expenses as provided in N. C. General Statutes 138-5 and 138-6. These expenses shall be provided from funds made available from the Department of Transportation.

Section 5. AGENCY COOPERATION

Every agency and department of state government is directed to cooperate with the Council by providing necessary information requested by the Council and to provide the Council on a timely basis departmental directives and procedures applied within the agency or department which affect the motor carrier industry.

Section 6. EFFECTIVE DATE

This Order shall be effective immediately and shall remain in effect as provided by N. C. General Statutes 147-16.2.

Done in the Capital City of Raleigh, North Carolina, this 18th day of May, 1989.

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NO. 92
ESTABLISHING THE WESTERN NORTH CAROLINA
ENVIRONMENTAL COUNCIL

The counties of Western North Carolina are among the most environmentally and economically important areas of the State. Like elsewhere in the State, population increases and the needs of today's society are bringing changes to these counties requiring that choices be made as to the means by which the environmental and economic needs of the area can best complement each other. When such choices are to be made it is important that interested parties be fully, accurately and timely informed as to all aspects of the choices that are to be made and the issues that are to be decided. This executive order is to provide an effective means for achieving that end.

THEREFORE, pursuant to authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1: There is hereby created the Western North Carolina Environmental Council. The purpose of the Council shall be to act as a forum in which environmental and economic concerns in Western North Carolina may be openly inquired into and discussed, to the end that interested parties may be fully, accurately and timely informed as to all aspects

of the choices that are to be made and the issues that are to be decided concerning them.

Section 2: As used herein "Western North Carolina" shall include the following counties and such other geographical areas as the Council from time to time deems appropriate, either on a permanent or ad hoc basis:

Alleghany	Macon
Ashe	Swain
Avery	Madison
Buncombe	McDowell
Burke	Mitchell
Caldwell	Polk
Cherokee	Rutherford
Clay	Transylvania
Graham	Watauga
Haywood	Wilkes
Henderson	Yancey
Jackson	

Section 3: The Council shall be composed of eighteen members in addition to the chairman and ex officio members. Council members shall be appointed by the Governor and shall consist of persons found by the Governor to be interested in and knowledgeable about the environment and economic affairs of Western North Carolina. Each member shall serve for such term as the Governor shall prescribe in appointing him. The Secretaries of the Departments of Commerce, Human Resources, Natural Resources and Community Development and Transportation or their designees shall be ex officio members of the Council.

Section 4: The Lt. Governor shall be chairman of the Council. There also shall be a vice-chairman appointed by the Governor from among the Council members. The chairman and vice-chairman shall serve for such terms as the Governor shall prescribe.

Section 5: The Council shall meet regularly at least quarterly at such places, on such dates and at such times as the Chairman shall direct.

All such meetings shall be held in Western North Carolina unless the Council shall direct otherwise. Special meetings of the Council shall be held on the call of the Chairman at such places, on such dates and at such times as the Chairman shall direct or at the call of at least a majority of the Council members, excluding the Chairman.

Section 6: The Chairman, and in his absence the Vice-Chairman and in both their absences a Council member designated by the Chairman, shall preside at all Council meetings. Council business shall be conducted according to rules adopted by the Council at its first meeting. Matters coming before the Council that are not covered by the rules shall be determined according to Robert's Rules of Order. Minutes of Council meetings and the records of the Council shall be kept by a Secretary chosen by the Council from among its members, or otherwise, at the first meeting of the Council.

Section 7: The Council shall be served by three permanent committees and such other committees and subcommittees as the Council shall direct. Committee and subcommittee duties, procedures and duration shall be as the Council prescribes. Committee and sub-committee members shall be appointed by the Chairman. The three permanent committees shall be:

(a) Agenda Committee

(b) Public Information Committee

(c) Technical Resource Committee

Section 8: In carrying out its purpose the Council shall:

(a) At its own initiative or at the request of public bodies, public officials or members of the public, select matters of environmental and/or economic concern to Western North Carolina and place them upon the Council agenda for consideration.

(b) Conduct public hearings concerning matters upon the Council agenda at which members of the public may present and explain to the Council their views.

(c) Conduct investigations into matters upon the Council agenda and announce the results of their investigations to the public.

(d) Make reports concerning matters upon the Council agenda to the affected parties, the Governor and other appropriate public officials, persons requesting such reports and the public.

Section 9: The administrative departments of State Government, including the component campuses of the University of North Carolina and the Community College System, shall render assistance to the Council upon request. The Departments of Administration, Human Resources, Natural Resources and Community Development and Transportation, together, shall furnish the Council with such staff as it reasonably shall need. The Secretaries of the four departments shall meet with the Chairman of the Council immediately after the date of the Council's first meeting and agree with him as to how such staff needs shall be furnished.

Section 10: Council members shall be reimbursed for necessary travel and subsistence expenses as authorized under G.S. §138-5 and §138-6. Funds for the reimbursement of such expenses shall be made available from funds appropriated to the Departments of Administration, Human Resources, Natural Resources and Community Development and Transportation as directed by the Director of the Budget.

Section 11: This Executive Order shall become effective immediately and shall expire in accordance with North Carolina law two years from the

date on which it is signed. This Executive Order is subject to reissuance or extension at the direction of the Governor.

Done in Raleigh, North Carolina, this 31st day of May, 1989.

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten, Secretary of State



State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 93

REISSUANCE OF EXECUTIVE ORDERS 8, 12, 36, 39, 43, 45, 47, 49, AND REISSUANCE AND AMENDMENTS OF EXECUTIVE ORDERS 13 AND 29

SECTION I: REISSUANCE

Executive Order Number 8, as extended by Executive Order Number 51, established the Governor's Advisory Committee on Travel and Tourism. It is hereby reissued without amendment and shall expire pursuant to N.C.G.S. 147-16.2.

Executive Order Number 12, signed on June 28, 1985, and extended by Executive Order Number 51, created the Governor's Highway Safety Commission. It is hereby reissued without amendment and shall expire pursuant to N.C.G.S. 147-16.2.

Executive Order Number 36, signed on March 6, 1987, established the Governor's Task Force on the Farm Economy. It is hereby reissued without amendment and shall expire pursuant to N.C.G.S. 147-16.2.

Executive Order Number 39, signed on March 16, 1987, established the Board of Trustees of the State Employees Deferred Compensation Fund. It is hereby reissued without amendment and shall expire pursuant to N.C.G.S. 147-16.2.

Executive Order Number 43, signed on April 7, 1987, established the North Carolina Emergency Response Commission. It is hereby reissued without amendment and shall expire pursuant to N.C.G.S. 147-16.2.

Executive Order Number 45, signed on April 22, 1987, established the Governor's Language Institute Advisory Board. It is hereby reissued without amendment and shall expire pursuant to N.C.G.S. 147-16.2.

Executive Order Number 47, signed on April 28, 1987, amended and re-established the North Carolina Fund For Children and Families Commission. It is hereby reissued without amendment and shall expire pursuant to N.C.G.S. 147-16.2, unless superceded by Legislation.

Executive Order Number 49, signed on May 20, 1987, created the Governor's Advisory Commission on Military Affairs. It is hereby reissued without amendment and shall expire pursuant to N.C.G.S. 147-16.2.

SECTION II: REISSUANCE AND AMENDMENT

Executive Order Number 13, signed on June 28, 1985, and extended and amended by Executive Order Number 51, created the

North Carolina Health Coordinating Council. It is hereby reissued and Section 3 of that order is amended to read as follows:

SECTION 3: MEMBERSHIP

The North Carolina Health Coordinating Council shall consist of not more than 24 members who shall be appointed by the Governor. The Council membership shall include the following representatives:

Academic Medical Centers	1
Area Health Education Centers	1
Business and Industry (at least one individual representing small business and one representing large business)	2
Health Insurance Industry	1
NC Association of County Commissioners	1
NC Health Care Facilities Association	1
NC Hospital Association	1
NC Association for Home Care	1
NC Medical Society	1
NC House of Representatives	1
NC Senate	1
Other Health Professional Associations (e.g., Nursing, Public Health, Dentistry, Pharmacy, Chiropractic, etc.)	3
Regional Representation (To provide adequate representation to all regions of the State. Emphasis should be on consumers of health care who are involved in health planning efforts at the regional level.)	6-8
Veterans Administration	1

Executive Order Number 29, signed by the Governor on October 2, 1986, is hereby reissued and amended by deleting from Section 3 of that Order the words, "the Task Force shall meet at

least once a month, or as frequently as desired by the Task Force members" and by inserting therein the words, "the Task Force shall meet at the call of the Chairman."

Done in Raleigh this 20th day of June, 1989.

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Secretary of State



State of North Carolina

JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 94
REISSUANCE OF EXECUTIVE ORDER NUMBER 15
AND EXTENSION OF EXECUTIVE ORDER NUMBER 71

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, it is ORDERED:

Executive Order Number 15 as amended by Executive Order Number 59 established the Juvenile Justice Planning Commission. Those orders are hereby reissued effective July 1, 1989. They shall remain in effect until June 30, 1993.

Executive Order Number 71 established the Governor's Task Force on Rail Passenger services. The expiration date of that Order is hereby extended until December 30, 1991.

Done in Raleigh, North Carolina this 14th day of July 1989.

James G. Martin
James G. Martin
Governor

ATTEST:
Rufus L. Edmisten
Rufus L. Edmisten
Secretary of State

State of North Carolina



JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER NUMBER 95
(REPLACING EXECUTIVE ORDER NO. 57)
GOVERNOR'S BLUE RIBBON COMMISSION ON COASTAL INITIATIVES

Executive Order Number 57, executed November 23, 1987 is hereby repealed and replaced in its entirety by this Executive Order.

North Carolina's coastal sounds and waterways represent unique and invaluable natural and historic resources for all the people of North Carolina.

The use and preservation of these resources is especially important to those recreational boaters, sports fishermen and vacationers who utilize our coastal areas.

In order to protect these natural and historic resources, provide for the orderly growth of marine related activity, and promote environmentally sound economic development along our coast, it is essential that North Carolina develop and implement a Coastal Initiatives Plan. This plan should work to enhance the quality of our coastal environment by clustering marine related development in carefully selected locations while other more

ecologically sensitive areas are given increased environmental protection.

Therefore, by authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1: ESTABLISHMENT

There is hereby established the Governor's Blue Ribbon Commission on Coastal Initiatives.

Section 2: MEMBERSHIP

The Commission shall be composed of not less than 10 members appointed by the Governor. The membership shall include the Secretaries of:

a. Department of Natural Resources and Community Development
b. Department of Commerce
c. Department of Administration
d. Department of Transportation
e. Department of Human Resources
f. Department of Cultural Resources

In addition to those representatives set forth above, the Commission shall include representatives from interested environmental groups, local governments and marine activity related businesses. All members heretofore named pursuant to Executive Order 57 retain their appointments to this Commission to serve at the pleasure of the Governor.

The Governor shall designate the chairman of the Commission and all members shall serve at the pleasure of the Governor. All vacancies shall be filled by the Governor.

Section 3: MEETINGS

The Commission shall meet at such times and at such locations as directed by the Chairman.

Section 4: DUTIES

(i) It shall be the responsibility of the Commission to develop and implement a long-term plan to provide additional protection for environmentally sensitive areas in the 20 coastal counties and to encourage and facilitate clustered development in selected local communities seeking to improve shoreline and marine activity related development.

Recommendations and areas of program implementation in the plan shall include, but not be limited to:

- protection measures for marine, coastal and historic resources
- navigation aids, including a waterways system plan
- incentives to support local community shoreline or marine activity related economic development

(ii) The Commission shall have the authority to advise and recommend such policies, goals and plans as its members may deem appropriate to the Secretary of the North Carolina Department of Natural Resources and Community Development or its successor agency.

Section 5: ESTABLISHMENT OF ADMINISTRATIVE AUTHORITY

The Secretary of the North Carolina Department of Natural Resources and Community Development or its successor agency is designated as the chief operating official of this Commission. In such capacity, the said Secretary shall:

(i) Receive the advice and recommendations of the Commission concerning the policies and goals of the Coastal Initiative Plan.

(ii) With the approval of the Governor, establish the final policies, goals, and plan of this Coastal Initiative.

(iii) Establish such interdepartmental working groups as he may deem necessary to carry out the policy, goals and plan of this Coastal Initiative.

(iv) Be responsible for implementing such governmental actions as he deems necessary to carry out the policies, goals and plan of this Coastal Initiative.

(v) Call upon the various secretaries of the several departments named in Section 2 of this ORDER to assist him to carry out the duties set forth in this section.

Section 6: ADMINISTRATIVE SUPPORT AND EXPENSES

The North Carolina Department of Natural Resources and Community Development shall provide the necessary staffing and administrative support for the Commission. All of the various department secretaries listed in Section 2 of this ORDER shall assist the Secretary of the North Carolina Department of Natural Resources and Community Development or its successor agency in this undertaking by rendering such attendance, staffing, and assistance as may be requested by the said chief operating official in order to implement this Coastal Initiative.

Members of the Commission shall be entitled to such per diem expenses and reimbursement for travel expenses as authorized under

N.C.G.S. 138-5. Members who are State employees shall be reimbursed as authorized by N.C.G.S. 138-6.

Funds for reimbursement of these and other administrative expenses of the Commission shall be made available from funds provided by the North Carolina Department of Administration, the North Carolina Department of Transportation, and the North Carolina Department of Natural Resources and Community Development, the Department of Commerce and the Department of Cultural Resources as authorized and directed by the Office Management and Budget.

Section 7: EFFECTIVE DATE

This ORDER shall be effective immediately, and shall remain in effect until December 31, 1992.

Done in the City of Raleigh, State of North Carolina, this the 25th day of July, 1989.

James G. Martin
Governor

ATTEST:

Rufus Edmisten, Secretary of State



State of North Carolina

JAMES G. MARTIN
GOVERNOR

EXECUTIVE ORDER 96
AMENDING EXECUTIVE ORDER NUMBER 92
ENTITLED ESTABLISHING THE WESTERN NORTH CAROLINA
ENVIRONMENTAL COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 3 of Executive Order number 92 is amended by adding to the list of ex officio members of the Council the Secretary of the Department of Administration.

This amendment shall be effective immediately. All other sections and provisions of Executive Order number 92 shall remain in effect and unchanged.

Done in Raleigh, this 25th day of July 1989.

James G. Martin
Governor

ATTEST:

Rufus L. Edmisten
Secretary of State

NUMERICAL INDEX TO SENATE AND HOUSE BILLS

1989 GENERAL ASSEMBLY FIRST SESSION 1989

Ratified Number refers to the Session Law Chapter number except when preceeded by an R, in which case it refers to the Resolution number.

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1	R1	119	435	217	R19
2	778	125	236	220	R3
15	661	127	664	223	199
16	3	130	742	231	802
22	26	136	77	242	323
26	322	139	706	244	794
28	196	141	436	245	744
37	56	142	67	254	475
38	8	147	679	260	712
40	1	148	39	265	523
42	R8	149	27	267	R24
43	500	151	86	275	238
44	752	152	49	280	265
49	99	154	R4	282	698
50	769	156	274	285	178
51	728	157	28	305	35
52	12	161	177	308	480
61	34	170	680	309	200
62	715	175	522	311	R22
63	176	177	23	319	131
64	662	179	24	324	168
66	18	180	40	330	524
67	19	183	25	332	481
77	641	186	50	335	100
79	85	187	32	338	324
80	403	192	743	339	463
82	5	193	237	351	201
83	273	197	249	357	663
88	30	199	143	358	302
90	31	200	57	359	371
106	549	201	45	360	344
109	370	206	197	368	R7
111	784	214	198	370	325
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379	179	475	R23	562	278
380	800	476	146	565	211
381	437	477	147	566	682
383	767	479	312	568	487
384	345	480	525	570	466
385	250	482	551	572	374
386	577	483	687	573	405
392	132	485	616	575	347
394	133	486	642	576	502
395	422	489	625	578	169
396	482	490	21	584	643
401	74	492	757	587	503
402	275	493	440	590	138
403	46	494	737	595	83
405	716	496	110	600	526
407	202	497	681	601	252
410	404	501	206	604	527
411	251	502	425	605	759
412	203	503	207	606	212
413	483	507	373	607	213
414	145	508	62	608	504
415	204	509	587	615	348
416	122	510	731	620	101
424	438	511	601	626	253
425	134	512	485	627	626
428	423	514	327	628	578
430	362	516	552	631	91
431	135	517	486	632	181
436	180	519	758	637	240
438	136	523	148	638	442
440	624	525	770	639	254
442	205	526	464	644	279
443	194	529	208	649	182
444	276	530	209	652	241
446	729	532	210	653	375
447	137	533	732	656	768
448	424	538	465	663	488
450	266	540	277	664	528
453	163	541	239	665	164
454	363	544	717	672	617
456	326	545	693	681	214
458	730	546	303	684	733
460	78	548	441	691	771
464	665	551	313	693	745
466	600	552	346	697	139
467	484	555	314	698	529
468	439	556	328	699	772
470	113	557	501	702	349
473	550	560	68	704	215

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719	489	961	694	1191	714
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730	688	968	555	1304	R26
731	627	977	656	1309	799
740	753	992	602	1313	R21
747	255	995	648	1320	787
752	746	1036	96	1321	R28
839	R9	1042	754	1322	R31
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902	684	1126	801	1330	649
903	666	1145	748	1333	689
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918	408	1163	713		

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5	37	147	80	275	690
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14	11	156	426	283	48
18	761	157	603	289	58
21	47	161	380	298	243
34	217	162	506	302	559
35	447	164	366	307	59
36	51	165	R2	308	70
38	505	166	351	314	282
40	315	174	75	316	594
41	53	180	65	320	560
52	2	186	38	323	593
53	720	192	88	324	631
58	7	193	762	327	221
69	52	194	R20	330	582
70	695	196	151	332	171
73	796	197	185	333	721
74	696	198	111	334	507
76	556	203	219	337	97
78	79	207	33	338	186
82	379	209	17	340	536
85	20	213	42	341	258
86	9	219	54	342	63
87	10	221	66	344	89
88	123	222	61	346	92
94	149	224	468	347	93
99	14	225	140	348	449
100	43	226	620	350	94
106	29	236	763	355	450
107	264	237	257	358	381
108	170	238	630	380	722
109	84	239	220	381	751
110	69	242	789	382	369
113	41	243	117	392	R5
114	6	245	165	397	749
116	60	246	469	399	692
119	619	249	124	403	595
121	184	251	152	405	427
122	150	252	367	406	428
125	64	254	55	408	71
126	15	258	368	413	187
129	16	259	535	414	561
132	116	264	22	415	112
137	365	268	764	421	304
141	448	269	153	425	707
144	218	272	557	426	583

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427	259	569	430	673	412
446	166	571	431	674	585
450	98	572	495	679	316
457	723	573	409	681	776
465	188	574	268	683	565
466	352	577	798	684	390
467	775	578	385	690	333
469	470	579	386	692	538
474	537	580	224	693	334
480	727	583	452	694	740
482	382	584	141	695	226
486	451	586	646	696	634
490	562	590	114	697	454
491	72	592	387	699	455
492	563	594	306	700	158
495	283	595	195	703	657
498	167	597	119	704	566
499	73	600	225	705	391
500	284	601	388	707	317
501	305	602	496	711	473
502	172	604	191	715	81
503	118	605	261	718	227
504	189	607	244	720	121
507	383	610	262	726	290
508	155	612	126	730	567
509	173	613	453	733	539
510	156	615	639	746	725
512	584	616	564	747	87
513	222	620	245	752	691
515	797	623	410	754	270
516	724	627	76	757	228
517	353	628	472	758	508
522	285	630	269	759	509
524	596	632	102	762	474
526	223	636	389	763	291
527	267	637	307	765	356
529	190	643	411	767	604
542	471	644	286	769	292
551	157	648	192	770	293
555	521	651	332	772	246
556	667	653	355	777	777
557	125	655	701	779	568
560	260	656	702	783	668
562	645	657	120	784	392
564	650	659	633	786	393
565	429	663	287	787	174
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567	331	670	288	789	104

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791	413	867	337	998	82
792	569	869	611	1008	457
793	44	871	419	1016	90
795	335	873	309	1020	142
796	229	874	632	1022	130
797	497	875	357	1023	434
798	247	877	248	1025	654
799	394	880	511	1026	272
800	605	884	95	1036	655
801	414	886	591	1037	498
802	606	887	319	1039	517
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808	159	894	399	1052	572
809	395	895	358	1053	635
810	318	898	651	1054	401
813	658	903	541	1062	790
814	586	904	512	1064	546
815	607	905	476	1072	339
816	659	906	513	1075	765
817	193	908	477	1078	298
819	294	910	129	1079	340
820	271	915	478	1082	233
821	741	917	297	1092	175
823	396	918	107	1094	360
824	697	920	160	1096	781
829	127	923	400	1103	726
831	128	926	514	1104	543
832	295	927	456	1105	573
833	296	928	542	1106	161
836	685	932	669	1107	791
837	106	933	515	1109	361
839	660	936	359	1111	311
840	608	939	516	1112	544
841	609	943	570	1113	R12
846	597	945	704	1114	R13
847	432	954	108	1116	299
848	675	957	652	1118	109
852	540	960	708	1121	341
853	621	970	338	1122	320
854	416	972	230	1123	710
857	397	973	571	1124	766
858	417	974	612	1125	613
859	433	979	231	1129	458
860	398	981	653	1138	R14
863	336	982	678	1140	R15
864	418	983	709	1149	499
865	510	987	420	1150	623

H.B.	*Ratified Number*	*H.B.*	*Ratified Number*	*H.B.*	*Ratified Number*
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1156	518	1262	460	1397	736
1160	592	1264	711	1401	R30
1162	115	1268	461	1565	677
1163	300	1274	462	1627	750
1175	755	1277	321	1668	782
1186	599	1278	301	1750	671
1192	342	1279	614	1775	705
1194	234	1283	343	1840	793
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1200	636	1292	479	1926	647
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1203	676	1311	792	2034	R27
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Suggestions For Use: When looking for local legislation, look under the name of the particular county or municipality in which you are interested. When looking for a law that amends or repeals a certain session law, look under "Laws Amended or Repealed." When looking for general or special appropriations, look under "Appropriations" or the name of the agency. General and special appropriations are contained in four chapters ratified during the 1989 General Assembly (Regular Session 1989): Chapter 500 (Current Operations); Chapter 752 (Current Operations Expansion); Chapter 754 (Capital Improvements); and Chapter 799 (Miscellaneous Budget Provisions). Section numbers appear in parentheses immediately following the Chapter references.

A

Chapter

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